

Michigan Register

Issue No. 4— 2006 (Published March 15, 2006)



GRAPHIC IMAGES IN THE MICHIGAN REGISTER

COVER DRAWING

Michigan State Capitol:

This image, with flags flying to indicate that both chambers of the legislature are in session, may have originated as an etching based on a drawing or a photograph. The artist is unknown. The drawing predates the placement of the statue of Austin T. Blair on the capitol grounds in 1898.

(Michigan State Archives)

PAGE GRAPHICS

Capitol Dome:

The architectural rendering of the Michigan State Capitol's dome is the work of Elijah E. Myers, the building's renowned architect. Myers inked the rendering on linen in late 1871 or early 1872. Myers' fine draftsmanship, the hallmark of his work, is clearly evident.

Because of their size, few architectural renderings of the 19th century have survived. Michigan is fortunate that many of Myers' designs for the Capitol were found in the building's attic in the 1950's. As part of the state's 1987 sesquicentennial celebration, they were conserved and deposited in the Michigan State Archives.

(Michigan State Archives)

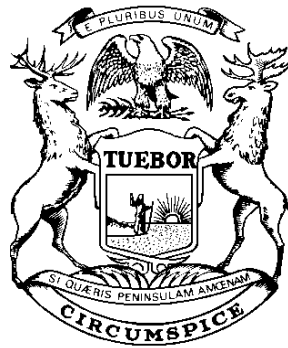
East Elevation of the Michigan State Capitol:

When Myers' drawings were discovered in the 1950's, this view of the Capitol – the one most familiar to Michigan citizens – was missing. During the building's recent restoration (1989-1992), this drawing was commissioned to recreate the architect's original rendering of the east (front) elevation.

(Michigan Capitol Committee)

Michigan Register

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Issue No. 4— 2006

(This issue, published March 15, 2006, contains
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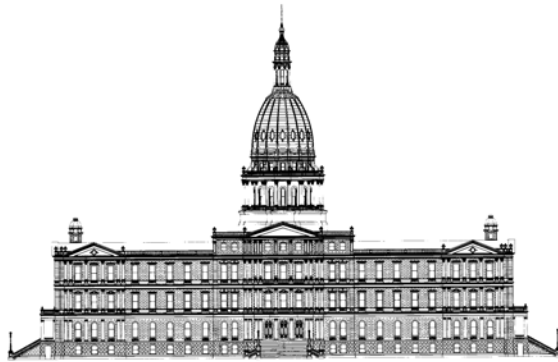
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State Office of Administrative Hearings and Rules

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Peter Plummer, Executive Director, State Office of Administrative Hearings and Rules; **Deidre O'Berry**, Administrative Rules Analyst for Operations and Publications.

Jennifer M. Granholm, Governor



John D. Cherry Jr., Lieutenant Governor

PREFACE

PUBLICATION AND CONTENTS OF THE MICHIGAN REGISTER

The State Office of Administrative Hearings and Rules publishes the *Michigan Register*.

While several statutory provisions address the publication and contents of the *Michigan Register*, two are of particular importance.

MCL 24.208 states:

Sec. 8 (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

- (a) Executive orders and executive reorganization orders.
 - (b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.
 - (c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.
 - (d) Proposed administrative rules.
 - (e) Notices of public hearings on proposed administrative rules.
 - (f) Administrative rules filed with the secretary of state.
 - (g) Emergency rules filed with the secretary of state.
 - (h) Notice of proposed and adopted agency guidelines.
 - (i) Other official information considered necessary or appropriate by the State Office of Administrative Hearings and Rules.
 - (j) Attorney general opinions.
 - (k) All of the items listed in section 7(1) after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, 1978 PA 368, MCL 333.22215 and 333.22217.
- (2) The State Office of Administrative Hearings and Rules shall publish a cumulative index for the Michigan register.
 - (3) The Michigan register shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs.
 - (4) If publication of an agency's proposed rule or guideline or an item described in subsection (1)(k) would be unreasonably expensive or lengthy, the State Office of Administrative Hearings and Rules may publish a brief synopsis of the proposed rule or guideline or item described in subsection (1)(k), including information on how to obtain a complete copy of the proposed rule or guideline or item described in subsection (1)(k) from the agency at no cost.
 - (5) An agency shall transmit a copy of the proposed rules and notice of public hearing to the State Office of Administrative Hearings and Rules for publication in the Michigan register.

MCL 4.1203 states:

Sec. 203. (1) The Michigan register fund is created in the state treasury and shall be administered by the State Office of Administrative Hearings and Rules. The fund shall be expended only as provided in this section.

- (2) The money received from the sale of the Michigan register, along with those amounts paid by state agencies pursuant to section 57 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.257, shall be deposited with the state treasurer and credited to the Michigan register fund.
- (3) The Michigan register fund shall be used to pay the costs preparing, printing, and distributing the Michigan register.
- (4) The department of management and budget shall sell copies of Michigan register at a price determined by the State Office of Administrative Hearings and Rules not to exceed cost of preparation, printing, and distribution.
- (5) Notwithstanding section 204, beginning January 1, 2001, the State Office of Administrative Hearings and Rules shall make the text of the Michigan register available to the public on the internet.
- (6) The information described in subsection (5) that is maintained by the State Office of Administrative Hearings and Rules shall be made available in the shortest feasible time after the information is available. The information described in subsection (5) that is not maintained by the State Office of Administrative Hearings and Rules shall be made available in the shortest feasible time after it is made available to the State Office of Administrative Hearings and Rules.
- (7) Subsection (5) does not alter or relinquish any copyright or other proprietary interest or entitlement of this state relating to any of the information made available under subsection (5).
- (8) The State Office of Administrative Hearings and Rules shall not charge a fee for providing the Michigan register on the internet as provided in subsection (5).
- (9) As used in this section, "Michigan register" means that term as defined in section 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.205.

CITATION TO THE MICHIGAN REGISTER

The *Michigan Register* is cited by year and issue number. For example, 2001 MR 1 refers to the year of issue (2001) and the issue number (1).

CLOSING DATES AND PUBLICATION SCHEDULE

The deadlines for submitting documents to the State Office of Administrative Hearings and Rules for publication in the *Michigan Register* are the first and fifteenth days of each calendar month, unless the submission day falls on a Saturday, Sunday, or legal holiday, in which event the deadline is extended to include the next day which is not a Saturday, Sunday, or legal holiday. Documents filed or received after 5:00 p.m. on the closing date of a filing period will appear in the succeeding issue of the *Michigan Register*.

The State Office of Administrative Hearings and Rules is not responsible for the editing and proofreading of documents submitted for publication.

Documents submitted for publication should be delivered or mailed in an electronic format to the following address: MICHIGAN REGISTER, State Office of Administrative Hearings and Rules, Ottawa Building - Second Floor, 611 W. Ottawa, P.O. Box 30695, Lansing, MI 48933.

RELATIONSHIP TO THE MICHIGAN ADMINISTRATIVE CODE

The *Michigan Administrative Code* (1979 edition), which contains all permanent administrative rules in effect as of December 1979, was, during the period 1980-83, updated each calendar quarter with the publication of a paperback supplement. An annual supplement contained those permanent rules, which had appeared in the 4 quarterly supplements covering that year.

Quarterly supplements to the Code were discontinued in January 1984, and replaced by the monthly publication of permanent rules and emergency rules in the *Michigan Register*. Annual supplements have included the full text of those permanent rules that appear in the twelve monthly issues of the *Register* during a given calendar year. Emergency rules published in an issue of the *Register* are noted in the annual supplement to the Code.

SUBSCRIPTIONS AND DISTRIBUTION

The *Michigan Register*, a publication of the State of Michigan, is available for public subscription at a cost of \$400.00 per year. Submit subscription requests to: State Office of Administrative Hearings and Rules, Ottawa Building - Second Floor, 611 W. Ottawa, P.O. Box 30695, Lansing, MI 48933. Checks Payable: State of Michigan. Any questions should be directed to the State Office of Administrative Hearings and Rules (517) 335-2484.

INTERNET ACCESS

The *Michigan Register* can be viewed free of charge on the Internet web site of the State Office of Administrative Hearings and Rules: www.michigan.gov/cis/0,1607,7-154-10576_35738---,00.html

Issue 2000-3 and all subsequent editions of the *Michigan Register* can be viewed on the State Office of Administrative Hearings and Rules Internet web site. The electronic version of the *Register* can be navigated using the blue highlighted links found in the Contents section. Clicking on a highlighted title will take the reader to related text, clicking on a highlighted header above the text will return the reader to the Contents section.

Peter Plummer, Executive Director
State Office of Administrative Hearings and Rules

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Issue No.	Closing Date for Filing or Submission Of Documents (5 p.m.)	Publication Date
1	January 15, 2006	February 1, 2006
2	February 1, 2006	February 15, 2006
3	February 15, 2006	March 1, 2006
4	March 1, 2006	March 15, 2006
5	March 15, 2006	April 1, 2006
6	April 1, 2006	April 15, 2006
7	April 15, 2006	May 1, 2006
8	May 1, 2006	May 15, 2006
9	May 15, 2006	June 1, 2006
10	June 1, 2006	June 15, 2006
11	June 15, 2006	July 1, 2006
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19	October 15, 2006	November 1, 2006
20	November 1, 2006	November 15, 2006
21	November 15, 2006	December 1, 2006
22	December 1, 2006	December 15, 2006
23	December 15, 2006	January 1, 2006
24	January 1, 2007	January 15, 2007

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**ADMINISTRATIVE RULES
FILED WITH THE SECRETARY OF STATE**

MCL 24.208 states in part:

“Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(f) Administrative rules filed with the secretary of state.”

ADMINISTRATIVE RULES

SOARH 2005-012

DEPARTMENT OF LABOR & ECONOMIC GROWTH

DIRECTOR'S OFFICE

BARBERS

Filed with the Secretary of State on February 22, 2006

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of labor and economic growth by section sections 308, 1105, 1108, and 1112 of 1980 PA 299, MCL 339.308, 339.1105, 339.1108, and 339.1112, Executive Reorganization Order No. 1996-2, MCL 445.2001, and Executive Reorganization Order No. 2003-1, MCL 445.2011.)

R 339.6045 of the Michigan Administrative Code is amended, and R 339.6051 is added to the Code as follows:

R 339.6045 Student conduct; education requirements.

Rule 45. (1) A barber college shall not permit a student to work on a public patron in a barber college until he or she presents a student license issued to the student. A student shall comply strictly with the rules governing barbers and barbershops in this state.

(2) For the purpose of meeting the equivalent tenth grade education requirement as used in the act, the department shall accept a score of 39 or higher, before January, 2002, or, for tests administered in January, 2002 or later, 390 or higher using the general educational development (GED) test, or the ability to benefit (ATB) basic skills tests approved by the U.S. department of education as constituting prima facie evidence of equivalence to a tenth grade education.

(3) For the purpose of meeting the requirements of graduation from an accredited high school as used in the act, the department shall accept successful completion of the general educational development (GED) test or the ability to benefit (ATB) scholastic level exam as constituting prima facie evidence of demonstrating equivalence to a high school diploma.

(4) Information about the general educational development certification (GED) test is available from the Michigan Department of Labor and Economic Growth, GED Testing, Victor Office Center-3RD FLOOR, 201 N. Washington Square, Lansing MI 48913, telephone: 517/373-1692. Information about the ability to benefit basic skills tests (WBST) is available from Wonderlic, Inc., 1795 N. Butterfield Road, Libertyville IL 60048-1238. Telephone: toll free 877/568-5791 or local: 847/247-2530. Internet address: www.wonderlic.com.

(5) The department may renew a student license on behalf of the board for more than 1 additional year, upon student submission of reasons satisfactory to the department.

R 339.6051 School Examinations.

Rule 51 (1) A barber college shall administer final theory and practical examinations on all curriculum subjects to students, and shall certify to the department, or its designees, those students who pass the examinations.

ADMINISTRATIVE RULES

SOARH 2005-025

DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY DIVISION

AIR POLLUTION CONTROL

Filed with the Secretary of State on February 22, 2006

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of environmental quality by sections 5503 and 5512 of 1994 PA 451, MCL 324.5503 and 324.5512, and Executive Reorganization Order No. 1995-18, MCL 324.99903)

R 336.1627 of the Michigan Administrative Code is amended as follows:

**PART 6. EMISSION LIMITATIONS AND PROHIBITIONS--
EXISTING SOURCES OF VOLATILE ORGANIC COMPOUND EMISSIONS**

R 336.1627 Delivery vessels; vapor collection systems.

Rule 627. (1) A person shall not operate any delivery vessel that is subject to control by a vapor collection system, either vapor balance or recovery system, required by R 336.1606, R 336.1607, R 336.1608, R 336.1609, R 336.1703, R 336.1704, R 336.1705, or R 336.1706, unless all of the provisions of this rule are met.

(2) Delivery vessels shall comply with all requirements described in the U.S. Environmental Protection Agency Method 27, as adopted by reference in R 336.2004(1)(u).

(3) The owner of any delivery vessel that is subject to subrule (1) of this rule shall test the delivery vessel in accordance with R 336.2004(1)(u) within 1 year of the date of the previous test. Notification of the exact time and location of the test shall be given to the department, in writing, not less than 7 days before the actual test. If the time or location of the test changes for any reason, then the owner or operator shall notify the department as soon as practical.

(4) The test shall comply with documentation requirements described in the U.S. Environmental Protection Agency Method 27 and shall be submitted to the department within 30 days of the test completion and in a form acceptable to the department. Upon successful completion of the required testing, the vessel shall be deemed provisionally certified providing the department does not invalidate the certification by issuing disapproval within 45 days of receipt of the results.

(5) There shall be no visible liquid leaks from the vessel or collection system, except when the disconnection of dry breaks in liquid lines produces a few drops of liquid.

- (6) A person shall not operate any vapor collection system, either vapor balance or recovery system, required by R 336.1606, R 336.1607, R 336.1608, R 336.1609, R 336.1703, R 336.1704, R 336.1705, or R 336.1706, unless all of the provisions of subrules (7) to (11) of this rule are met.
- (7) There shall be no gas detector reading greater than or equal to 100% of the lower explosive limit at a distance of 1 inch from the location of the potential leak in the vapor collection system. Leaks shall be detected by a combustible gas detector using the test procedure described in R 336.2005.
- (8) There shall be no visible leaks, except from the disconnection of bottom loading dry breaks and from raising top loading vapor heads, where a few drops are permitted.
- (9) The vapor collection system shall be designed and operated to prevent gauge pressure in the delivery vessel from exceeding 0.6 pounds per square inch and to prevent vacuum from exceeding -0.2 pounds per square inch gauge.
- (10) The department may require the owner or operator of any vapor collection system subject to the provisions of subrule (6) of this rule to test the system in accordance with R 336.2005. The tests shall be conducted within 60 days following receipt of written notification from the department. Notification of the exact time and location of the test shall be given to the department, in writing, not less than 7 days before the actual test. Documentation of the test that states the date and location of the test, test procedures, the type of equipment used, and the results of the test shall be submitted to the department within 60 days following the last date of the test. If the time or location of the test changes for any reason, then the owner or operator shall notify the department as soon as practical.
- (11) Any delivery vessel or component of a vapor collection system that fails to meet any provision of this rule shall not be operated until the necessary repairs have been made, the vessel or collection system has been retested, and the test results have been submitted to the department.

ADMINISTRATIVE RULES

SOAHR 2005-026

DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY DIVISION

AIR POLLUTION CONTROL

Filed with the Secretary of State on February 22, 2006

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of environmental quality by sections 5503 and 5512 of 1994 PA 451, MCL 324.5503 and 324.5512, and Executive Reorganization Order No. 1995-18, MCL 324.99903)

R 336.2004 and R 336.2005 of the Michigan Administrative Code are amended as follows:

PART 10. INTERMITTENT TESTING AND SAMPLING

R 336.2004 Appendix A; reference test methods; adoption of federal reference test methods.

Rule 1004. (1) The following federal reference test methods, described in the provisions of 40 C.F.R. part 60, appendix A (2005), are the reference test methods for performance tests required pursuant to the provisions of this part:

- (a) Method 1 - Sample and velocity traverse for stationary sources.
- (b) Method 1A - Sample and velocity traverses for stationary sources with small stacks or ducts.
- (c) Method 2 - Determination of stack gas velocity and volumetric flow rate (type-S pitot tube).
- (d) Method 2A - Direct measurement of gas volume through pipes and small ducts.
- (e) Method 2C - Determination of stack gas velocity and volumetric flow rate in small stacks and ducts (standard pitot tube).
- (f) Method 2D - Measurement of gas volumetric flow rates in small pipes and ducts.
- (g) Method 3 - Gas analysis for the determination of dry molecular weight.
- (h) Method 4 - Determination of moisture content in stack gases.
- (i) Method 6 - Determination of sulfur dioxide emissions from stationary sources.
- (j) Method 7 - Determination of nitrogen oxide emissions from stationary sources.
- (k) Method 8 - Determination of sulfuric acid mist and sulfur dioxide emissions from stationary sources.
- (l) Method 9 - Visual determination of the opacity of emissions from stationary sources.
- (m) Method 10 - Determination of carbon monoxide emissions from stationary sources.
- (n) Method 10B - Determination of carbon monoxide emissions from stationary sources.
- (o) Method 18 - Measurement of gaseous organic compound emissions by gas chromatography.
- (p) Method 21 - Determination of volatile organic compound leaks.
- (q) Method 24 - Determination of volatile matter content, water content, density, volume solids and weight solids of surface coatings.

- (r) Method 24A - Determination of volatile matter content and density of printing inks and related coatings.
- (s) Method 25 - Determination of total gaseous nonmethane organic emissions as carbon.
- (t) Method 25A - Determination of total gaseous organic concentration using a flame ionization analyzer.
- (u) Method 27 – Determination of vapor tightness of gasoline delivery tank using pressure-vacuum test.
- (2) The reference test methods listed in subrule (1) of this rule are adopted by reference in this rule. Copies of the test methods may be inspected at the Lansing office of the air quality division of the department of environmental quality. A copy of title 40 of the Code of Federal Regulations, part 60, appendix A, may be obtained from the Department of Environmental Quality, Air Quality Division, P.O. Box 30260, Lansing, Michigan 48909-7760; from the Superintendent of Documents, United States Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, at a cost at the time of adoption of these rules of \$57.00; or on the United States government printing office internet web site at <http://www.access.gpo.gov>.
- (3) All alternatives that are subject to the approval of the administrator in the adopted federal reference methods are subject to the approval of the department.
- (4) Determinations of compliance with visible emission standards for stationary sources shall be conducted as specified in reference test method 9 or other alternative method approved by the department, with the following exceptions:
 - (a) Visible emissions from a scarfing operation at a steel manufacturing facility shall be determined as specified in reference test method 9A, which is described in R 336.2030.
 - (b) Visible emissions from a coke oven pushing operation and fugitive coke oven visible emissions shall be determined as specified in reference test method 9B, which is described in R 336.2031.
 - (c) Visible emissions, fugitive and nonfugitive, from basic oxygen furnace operations, hot metal transfer operations, and hot metal desulfurization operations shall be determined as specified in reference method 9C, which is described in R 336.2032.
- (5) Determinations of particulate emission rates for stationary sources shall be conducted as specified in 1 or more of the following reference test methods:
 - (a) Reference test method 5B, which is described in R 336.2011.
 - (b) Reference test method 5C, which is described in R 336.2012.
 - (c) Reference test method 5D, which is described in R 336.2013.
 - (d) Reference test method 5E, which is described in R 336.2014.
 - (e) "Standard Methods for the Examination of Water and Wastewater," (14th edition), section 208C, as described and modified in R 336.2033.
- (6) Determinations of total gaseous nonmethane organic emissions as carbon, using the alternate version of federal reference test method 25 incorporating the Byron analysis, shall be conducted as specified in R 336.2006.

R 336.2005 Reference test methods for state-requested tests of delivery vessels.

Rule 1005. The following reference test method shall be used to detect gasoline vapor leaks by a combustible gas detector:

- (a) Principle. A combustible gas detector is used to indicate any incidence of leakage from gasoline delivery vessel tanks and vapor control systems. This qualitative monitoring procedure is an enforcement tool to confirm the continuing existence of leak-tight conditions.
- (b) Applicability. This method is applicable to determining leak-tightness of gasoline delivery vessel tanks during loading without taking the delivery vessel tank out of service. The method is applicable only if the vapor control system does not create back pressure in excess of the pressure limits of the delivery vessel tank compliance leak test. For vapor control systems, this method is applicable to determining leak-tightness at any time.
- (c) Apparatus and specifications. The following apparatus shall be used:

- (i) Manometer. Liquid manometer, or equivalent, capable of measuring up to 0.9 pounds per square inch (24.9 inches of water) gauge pressure within 0.003 pounds per square inch (0.1 inches of water) precision.
- (ii) Combustible gas detector. A portable hydrocarbon gas analyzer with associated sampling line and probe which complies with all of the following provisions:
 - (A) Safety. The device is certified as safe for operation in explosive atmospheres.
 - (B) Range. The device shall have a minimum range of 0 to 100% of the lower explosive limit (LEL) as propane.
 - (C) Probe diameter. The sampling probe shall have an internal diameter of 0.625 centimeters (1/4 inch).
 - (D) Probe length. The probe sampling line shall be of sufficient length for easy maneuverability during testing.
 - (E) Response time. The response time for full-scale deflection shall be less than 8 seconds for a detector with a sampling line and probe attached.
- (d) Test procedure. The following test procedure shall be complied with:
 - (i) Pressure. Place a pressure tap in the terminal, plant, or service station vapor control system as close as possible to the connection with the delivery vessel tank. Record the pressure periodically during testing.
 - (ii) Calibration. Calibrate the combustible gas detector with 2.2% propane, by volume, in air for 100% lower explosive limit response.
 - (iii) Monitoring procedure. During loading or unloading, check the periphery of all potential sources of leakage of the delivery vessel tank and of the terminal, plant, or service station vapor collection system with a combustible gas detector. The check shall comply with the following procedure:
 - (A) Probe distance. The probe inlet shall be 2.5 centimeters from the potential leak source.
 - (B) Probe movement. Move the probe slowly (2.0 centimeters per second). If there is any meter deflection at a potential leak source, move the probe to locate the point of highest meter response.
 - (C) Probe position. As much as possible, the probe inlet shall be positioned in the path of (parallel to) the vapor flow from a leak.
 - (D) Wind. Attempt, as much as possible, to block the wind from the area being monitored.
 - (iv) Recording. Record the highest detector reading and location for each incidence of leakage.

ADMINISTRATIVE RULES

SOARH 2005-058

DEPARTMENT OF COMMUNITY HEALTH

BUREAU OF COMMUNITY LIVING, CHILDREN AND FAMILIES

BLOOD LEAD ANALYSIS REPORTING

Filed with the Secretary of State on February 22, 2006

These rules take effect immediately after filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the department of community health by 1978 PA 368, MCL 333.5111, 333.5474(1)(c), and 333.20531, 1978 PA 312, MCL 325.78, and Executive Reorganization Order No. 1996-1, MCL 330.3101)

R 325.9084 and R 325.9086 of the Michigan Administrative Code are amended as follows:

R 325.9084 Electronic communications.

Rule 4. (1) A clinical laboratory shall submit the data required in R 325.9083 electronically to the agency.
(2) For electronic reporting, upon mutual agreement between the reporting laboratory and the agency, the reporting shall utilize the data format specifications provided by the agency.

R 325.9086 Confidentiality of reports.

Rule 6. (1) Except as provided in subrule (2) of this rule, the agency shall maintain the confidentiality of all reports of blood lead tests submitted to the agency and shall not release reports or information that may be used to directly link the information to a particular individual.

(2) The agency may release reports or information, otherwise protected under subrule (1) of this rule under 1 of the following conditions:

(a) If the agency has received written consent from the individual, or from the individual's parent or legal guardian, requesting the release of information.

(b) If necessary for law enforcement investigation or prosecution of a property manager, housing commission, or owner of a rental unit under 2004 PA 434, MCL 333.5475a.

(c) If the director of the department determines that release is crucial to protect the public health against imminent threat or danger.

(3) Medical and epidemiological information that is released to a legislative body shall not contain information that identifies a specific individual. Aggregate epidemiological information concerning the public health that is released to the public for informational purposes only shall not contain information that identifies a specific individual.

**PROPOSED ADMINISTRATIVE RULES,
NOTICES OF PUBLIC HEARINGS**

MCL 24.242(3) states in part:

“... the agency shall submit a copy of the notice of public hearing to the State Office of Administrative Hearings and Rules for publication in the Michigan register. An agency's notice shall be published in the Michigan register before the public hearing and the agency shall file a copy of the notice of public hearing with the State Office of Administrative Hearings and Rules.”

MCL 24.208 states in part:

“Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(d) Proposed administrative rules.

(e) Notices of public hearings on proposed administrative rules.”

PROPOSED ADMINISTRATIVE RULES

SOAHR 2004-055

DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER BUREAU

WATER RESOURCES PROTECTION

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(By authority conferred on the department of environmental quality by sections 3103 and 3106 of 1994 PA 451, MCL 324.3103 and 324.3106)

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R 323.2103, R 323.2104, R 323.2108, R 323.2161, R 323.2189, and R 323.2190 of the Michigan Administrative Code are amended, and R 323.2197 is added to the code as follows:

PART 21. WASTEWATER DISCHARGE PERMITS

R 323.2103 Definitions; G to O.

Rule 2103. As used in this part:

(a) “General permit” means a national permit issued authorizing a category of similar discharges.

(b) “Guidelines,” **unless otherwise noted**, means the federal guidelines promulgated by the USEPA entitled “Part **124 - Procedures for Decisionmaking**,” **40 C.F.R. §124 (2004)**.~~123 — State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System,” 40 C.F.R. §123 et seq. (1984).~~

(c) “Illicit connection” means a physical connection to a separate storm sewer that primarily conveys non-storm water discharges other than uncontaminated groundwater into the storm sewer; or a physical connection not authorized or permitted by the local authority, where a local authority requires authorization or a permit for physical connections.

(d) “Illicit discharge” means any discharge to, or seepage into, a separate storm sewer that is not composed entirely of storm water or uncontaminated groundwater. Illicit discharges include non-storm water discharges through pipes or other physical connections; dumping of motor vehicle fluids, household hazardous wastes, domestic animal wastes, or litter; collection and intentional dumping of grass clippings or leaf litter; or unauthorized discharges of sewage, industrial waste, restaurant wastes, or any other non-storm water waste directly into a separate storm sewer.

(e) “Industry” means a private person, corporation, firm, plant, or establishment that directly or indirectly discharges waste or wastewater into the waters of the state.

(f) “Land application area” specifically for CAFOs means land under the control of an AFO owner or operator, whether it is owned, rented, leased, or subject to an access agreement to which production area waste or CAFO process wastewater is or may be applied. Land application area includes land not owned by the AFO owner or operator but the AFO owner or operator has control of the land application of production area waste or CAFO process wastewater.

(g) “Large CAFO” is an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

- (i) 700 mature dairy cows, whether milked or dry.
- (ii) 1,000 veal calves.
- (iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow/calf pairs.
- (iv) 2,500 swine each weighing 55 pounds or more.
- (v) 10,000 swine each weighing less than 55 pounds.
- (vi) 500 horses.
- (vii) 10,000 sheep or lambs.
- (viii) 55,000 turkeys.
- (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system.
- (x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system.
- (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system.
- (xii) 30,000 ducks, if the AFO uses other than a liquid manure handling system.
- (xiii) 5,000 ducks, if the AFO uses a liquid manure handling system.

(h) “Local limit” means a specific prohibition or limit on discharges of pollutants or pollutant parameters by a nondomestic source to a POTW that are set by a POTW in accordance with an approved pretreatment program.

(i) “Mailing list” means a permanent list of persons who request notification and information on public hearings, permits, and other NPDES forms that is prepared and maintained by the department pursuant to the guidelines, these rules, and 1969 PA 306, MCL 24.201 et seq.

(j) “Management agency” means an area-wide waste treatment management agency that is designated by the governor pursuant to the provisions of section 208(a) of the federal act.

(k) “Manure” ~~is defined to include~~ includes manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.

(l) “Maximum extent practicable” or “MEP” means implementation of best management practices by a public body to comply with an approved storm water management program as required in a national permit for a municipal separate storm sewer system, in a manner that is environmentally beneficial, technically feasible, and within the public body’s legal authority.

(m) “Medium CAFO” is defined as the following:

(i) Is an AFO that stables or confines the numbers of animals specified in any of the categories listed in subdivision (ii) of this subrule, and any of the following are met:

- (A) Has been designated by the department as a CAFO under R 323.2196(3).
- (B) Pollutants are discharged from the production area into waters of the state through a manmade ditch, pipe, tile, swale, flushing system, or other similar manmade conveyance.
- (C) Pollutants are discharged directly into waters of the state from the production area which originate outside of and pass over, across, or through the facility or that otherwise come into direct contact with the animals confined in the operation.

(ii) Includes the following number and type of animals:

- (A) 200 to 699 mature dairy cows, whether milked or dry.
- (B) 300 to 999 veal calves.
- (C) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow/calf pairs.
- (D) 750 to 2,499 swine each weighing 55 pounds or more.
- (E) 3,000 to 9,999 swine each weighing less than 55 pounds.
- (F) 150 to 499 horses.

(G) 3,000 to 9,999 sheep or lambs.

(H) 16,500 to 54,999 turkeys.

(I) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system.

(J) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system.

(K) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system.

(L) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system.

(M) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system.

(n) “Minor discharge” means a discharge of wastewater which has a total volume of less than 50,000 gallons on every day of the year, which does not affect the waters of another state, and which is not identified by the department, the regional administrator, or by the administrator of the USEPA, in regulations issued by him or her pursuant to the provisions of section 307(a) of the federal act, as a discharge which is not a minor discharge, except that a discharge is not a minor discharge if there is a discharge of less than 50,000 gallons on any day of the year which represents 1 of 2 or more discharges from a single person, municipality, or industry that, in total, is more than 50,000 gallons on any day of the year.

(o) “Municipal separate storm sewer system” or “MS4” means all separate storm sewers that are owned or operated by the United States, a state, city, village, township, county, district, association, or other public body created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law, such as a sewer district, flood control district, or drainage district, or similar entity, or a designated or approved management agency under section 208 of the federal act that discharges to waters of the state. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(p) “National permit” means an NPDES permit, or equivalent document or requirements, issued by the department to a discharger pursuant to sections 3106 and 3112 of part 31 of the act for discharges into surface waters.

(q) “New source” means a building, structure, facility, or installation from which waste, pollutants, or wastewater is or may be discharged into the surface or groundwaters of the state or on the ground and for which construction was commenced after publication of proposed regulations by the USEPA prescribing a standard of performance pursuant to the provisions of section 306(a) of the federal act that will be applicable to the source if the standard is thereafter promulgated in accordance with the provisions of section 306 of the federal act.

(r) “Noncompliance list” means a list of dischargers, which is prepared by the department pursuant to these rules and the guidelines for transmittal to the regional administrator, who fail or refuse to comply with a compliance schedule in a permit issued pursuant to part 31 of the act.

(s) “Nondomestic source” or “source of nondomestic wastewater” means an industry, commercial establishment, or other entity that discharges wastewater to a publicly owned treatment works other than, or in addition to, water-carried wastes from toilet, kitchen, laundry, bathing, or other facilities that are used for household purposes.

(t) “NPDES” means the national pollutant discharge elimination system established by the federal act.

(u) “NPDES form” means any issued permit and any uniform national form which is used by the department, which is developed for use in the NPDES, and which is prescribed in regulations promulgated by the administrator of the USEPA, including an NPDES application and a reporting form.

(v) “On-site disposal system” means a natural system or mechanical device used to collect, treat and discharge, or reclaim wastewater from 1 or more dwelling units without the use of community-wide sewers or a centralized treatment facility.

R 323.2104 Definitions; P to W.

Rule 2104. As used in this part:

(a) “Part 91 permitting entity” means an agency that is designated by a county board of commissioners pursuant to the provisions of section 9105 of part 91 of the act; an agency that is designated by a city, village, or township in accordance with the provisions of section 9106 of part 91 of the act; or the department if the construction activity is under the jurisdiction of 2 or more municipal or county enforcing agencies; or the department for soil erosion and sedimentation activities under part 615 or part 631 pursuant to the provisions of section 9115 of part 91 of the act.

(b) “Person” means an individual, partnership, association, corporation, industry, or public body.

(c) “Point source discharge” means a discharge that is released to the waters of the state by a discernible, confined, and discrete conveyance, including any of the following from which wastewater is or may be discharged:

- (i) A pipe.
- (ii) A ditch.
- (iii) A channel.
- (iv) A tunnel.
- (v) A conduit.
- (vi) A well.
- (vii) A discrete fissure.
- (viii) A container.
- (ix) A concentrated animal feeding operation.
- (x) A vessel or other floating craft.

The term does not include a legally established county or intercounty drain, except for a county or intercounty drain that has a POTW designated as part of the drain or a discharge otherwise required to be authorized by a national permit.

(d) “Production area” means that part of an AFO that includes animal confinement area, manure storage area, raw materials storage area, and waste containment areas. The animal confinement area includes open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes lagoons, runoff ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes feed silos, silage bunkers, and bedding materials. The waste containment area includes settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

(e) “Production area waste” means manure and any waste from the production area and any precipitation, (for example, rain or snow), which comes into contact with, or is contaminated by, manure or any of the components listed in the definition for “production area.” Production area waste does not include water from land application areas.

(f) “Public body” means the United States, the state of Michigan, city, village, township, county, school district, public college or university, single purpose governmental agency; or any other body which is created by federal or state statute or law.

(g) “Publicly owned treatment works” or “POTW” means either of the following:

(i) A facility or facilities which are owned by a governmental entity and which are used or intended to be used for the collection and treatment of municipal wastewater, including sewage, liquid industrial waste, and storm water.

(ii) The owner or owners of a facility or facilities specified in paragraph (i) of this subdivision.

(h) “Regional administrator” means the USEPA region V administrator.

(i) "Regulated MS4" means an MS4 that is required to have a national permit to discharge storm water into surface waters of the state pursuant to R 323.2161(c), (d), (e), or (f).

(j) "Regulated pollutants" means all of the following:

(i) Pollutants that are limited by categorical pretreatment standards as defined in R 323.2302(gq).

(ii) Pollutants for which control measures on nondomestic sources are necessary to avoid noncompliance with effluent limitations established in the POTW's discharge permit.

(iii) Pollutants for which control measures on nondomestic sources are necessary to avoid restricting the POTW's approved residuals management program.

(iv) Pollutants for which control measures on nondomestic sources are necessary to avoid operational problems at the treatment facility or collection system.

(k) "Reporting form" means the uniform NPDES reporting form, including subsequent additions, revisions, or modifications thereof, which is promulgated by the administrator of the USEPA and which is adopted by the department for use in administering these rules, or a state form that is prescribed by the department for use in administering these rules, for reporting data and information to the department by a discharger on monitoring and other conditions of permits.

(l) "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

(m) "Separate storm sewer system" means a system of drainage, including, but not limited to, roads, catch basins, curbs, gutters, parking lots, ditches, conduits, pumping devices, or man-made channels, which has the following characteristics:

(i) The system is not a combined sewer where storm water mixes with sanitary wastes.

(ii) The system is not part of a publicly owned treatment works (POTW).

(n) "Site" means the area where a construction activity is physically located or conducted, including adjacent land that is used in connection with the construction activity.

(o) "Small CAFO" means an AFO that is designated a CAFO by the department under R 323.2196(3) and is not a medium CAFO.

(p) "Soil erosion and sedimentation control permit" means a permit that is issued pursuant to the provisions of part 91 of the act by a part 91 permitting entity.

(q) "Soil erosion control measures" means the measures or procedures to prevent or reduce the pollution of waters of the state that are required in the soil erosion and sedimentation control permit for the site or the selected control measures from the approved control plan that are applicable to the site.

(r) "Stabilization of earth change activity" means the proper placement, grading, or covering of soil or rock at a construction activity to ensure subsequent resistance to soil erosion, sliding, or other earth movement.

(s) "State permit" means a permit or equivalent document or requirements that are issued by the department to a discharger who discharges wastewater on the ground or into groundwaters.

(t) "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

(u) "Storm water discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the national permits program under 40 C.F.R. §122.3 and §122.27 (2000). For the categories of industries identified in this subdivision, the term includes, but is not limited to, **storm water discharges** from all of the following:

(i) ~~Storm water discharges from~~ industrial plant yards.

(ii) Immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility.

(iii) Material handling sites. **For the purposes of this paragraph subdivision, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product, or waste product.**

- (iv) Refuse sites.
- (v) Sites used for the application or disposal of process waste waters, as defined at 40 C.F.R. §401.11 (2000).
- (vi) Sites used for the storage and maintenance of material handling equipment.
- (vii) Sites used for residual treatment, storage, or disposal.
- (viii) Shipping and receiving areas.
- (ix) Manufacturing buildings.
- (x) Storage areas, including tank farms, for raw materials and intermediate and final products.
- (xi) Areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

~~For the purposes of this subdivision, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by product, or waste product.~~

(xii) The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the areas described in this paragraph.

(xiii) Industrial facilities include facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in the following paragraphs and those facilities designated by the department under the provisions of R 323.2161(1)(f). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subdivision:

(A) Facilities subject to EPA promulgated storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards, except facilities that have toxic pollutant effluent standards which are exempted under paragraph **(J✕)** of this subdivision.

(B) Facilities classified as standard industrial classifications 24, except 2434;; 26, except 265 and 267;; 28, except 283;; 29;; 311;; 32, except 323;; 33;; 3441;; **and** 373.

(C) Facilities classified as standard industrial classifications 10 through 14, mineral industry, including active or inactive mining operations, except for areas of non-coal mining operations which were released from applicable state or federal reclamation requirements after December 17, 1990, and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with, or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on the site of operations. Inactive mining operations are mining sites which are not being actively mined, but which have an identifiable owner/operator. Inactive mining sites do not include sites where mining claims are being maintained before disturbances associated with the extraction, beneficiation, or processing of mined materials and do not include sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

(D) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle c of the federal resource conservation and recovery act.

(E) Landfills, land application sites, and open dumps that receive or have received any industrial wastes, waste that is received from any of the facilities described under this subdivision, including those that are subject to regulation under subtitle D of the federal resource conservation and recovery act.

(F) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, which are classified as standard industrial classification 5015 and 5093.

(G) Steam electric power generating facilities, including coal handling sites.

(H) Transportation facilities classified as standard industrial classifications 40;; 41;; 42, except 4221 to 25;; 43;; 44;; 45;; and 5171 which have vehicle maintenance shops, equipment cleaning operations, or

airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance, including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication; equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i) to (vii), (ix), or (x) of this subdivision are associated with industrial activity.

(I) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that is located within the confines of the facility, provided the system has a design flow of

1.0 million gallons per day or more, or is required to have an approved federal pretreatment program under 40 C.F.R., part 403 (2000). Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the federal act.

(J) Facilities under standard industrial classifications 20;[;] 21;[;] 22;[;] 23;[;] 2434;[;] 25;[;] 265;[;] 267;[;] 27;[;] 283;[;] 285;[;] 30;[;] 31, except 311;[;] 323;[;] 34, except 3441;[;] 35;[;] 36;[;] 37, except 373;[;] 38;[;] 39;[;] and 4221 to 25.

(v) “Total maximum daily load” or “TMDL” means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

(w) “Trade secret” means the whole or any portion or phase of any manufacturing proprietary process or method which is not patented, which is secret, which is useful in compounding an article of trade that has a commercial value, and the secrecy of which the owner has taken reasonable measures to prevent from becoming available to persons other than those selected by the owner to have access thereto for limited purposes. “Trade secret” shall not be construed, for purposes of these rules, to include any information relative to the quantum and character of waste products or their constituents discharged or sought to be discharged into waters of this state.

(x) “Urbanized area” means a place and the adjacent densely populated territory that together have a minimum population of 50,000 people, as defined by the United States bureau of the census and as determined by the latest available decennial census.

(y) “Urbanizing area” means an area of contiguous census blocks with population densities of 1,000 persons or more per square mile that together have a population of 10,000 people or more, as determined by the latest available decennial census.

(z) “Vessel” means any contrivance that is used or capable of being used for navigation upon water, whether or not the contrivance is capable of self-propulsion, including any of the following:

- (i) Foreign and domestic vessels that are engaged in commerce upon the waters of the state.
- (ii) Passenger or other cargo-carrying vessels.
- (iii) Privately owned recreational watercraft.
- (iv) Any other floating craft.

(aa) “Waste” means any waste, wastewater, waste effluent, or pollutant that is discharged into water, including any of the following:

- (i) Dredged spoil.
- (ii) Solid waste.
- (iii) Incinerator residue.
- (iv) Sewage.
- (v) Garbage.
- (vi) Sewage sludge.
- (vii) Munitions.
- (viii) Chemical wastes.

- (ix) Biological materials.
- (x) Radioactive materials.
- (xi) Heat.
- (xii) Wrecked or discarded equipment.
- (xiii) Rock.
- (xiv) Sand.
- (xv) Cellar dirt.
- (xvi) Industrial, municipal, and agricultural waste.

(bb) “Wastewater” means liquid waste discharges directly or indirectly into the waters of the state that result from industrial and commercial processes and municipal operations, including liquid or water-carried process waste, cooling and condensing waters, and sanitary sewage.

(cc) “Water quality standards” means the part 4 water quality standards promulgated pursuant to part 31 of 1994 PA 451, as amended, being R 323.1041 to 323.1117 of the Michigan administrative code.

R 323.2108 Permits; application and filing procedures.

Rule 2108. (1) An application for a permit shall be completed in accordance with and subject to guidelines in 40 C.F.R. §122.21(2003~~5~~).

(2) A person discharging waste or wastewater from more than 1 location shall file a separate application for each discharge location. A single application may be filed for multiple outfalls discharging from a single location, except that the discharge from each outfall shall be described separately in the application.

R 323.2161 Storm water discharge permits.

Rule 2161. (1) A person who discharges storm water that is subject to regulation pursuant to the provisions of section 402(p) of the federal act and the corresponding regulations promulgated in 40 C.F.R. §122.26 (2000) shall apply for or obtain a national permit ~~by March 10, 2003, or earlier where another date is specified,~~ if the person has, will have, or operates any of the following:

(a) Storm water discharges associated with industrial activity. ~~If a facility is not owned or operated by a public body that serves a population of less than 100,000, other than an airport, power plant, or uncontrolled sanitary landfill, the permit application was to have been submitted to the department by October 1, 1992.~~

A national permit is not required if, in accordance with 40 C.F.R. §122.26(g) (2000), a discharge composed entirely of storm water is not a storm water discharge associated with industrial activity because there is no exposure of industrial materials and activities to rain, snow, snowmelt, or runoff, or any combination, and if the discharger has met the conditions of no exposure listed on a certification form provided by the department. The discharger shall complete, sign, and submit to the department the certification form provided by the department. A new certification form shall be submitted once every 5 years to qualify for continuation of the no exposure exclusion. This exclusion provision shall no longer apply and a national permit shall be required under either of the following conditions:

(i) If circumstances change and industrial materials or activities become exposed to rain, snow, snowmelt, or runoff, or any combination, then the conditions for this exclusion no longer apply. Any conditionally exempt discharger who anticipates changes in circumstances shall apply for and obtain national permit authorization before the change of circumstances. Failure to do so could result in penalties as provided under part 31 of the act for a discharge without a permit.

(ii) Notwithstanding the provisions of this subdivision, the department retains the authority to require national permit authorization, and deny this exclusion, upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to, a violation of an applicable water quality standard.

(b) Storm water discharges from a site of construction activity. ~~After October 1, 1992,~~ The notice of coverage shall be received before the startup of construction for any storm water discharge from a site of

construction activity disturbing 5 acres or more ~~that is not conducted by a public body serving a population of less than 100,000.~~

(c) An MS4 located in an urbanized area, except those exempted through cooperation with a permitted MS4 owner or operator under R 323.2161(2). Only storm water that flows from within the urbanized area is regulated.

(d) An MS4 located within an urbanizing area, which is designated by the department to need a national permit on the basis that it discharges storm water which results in a violation of water quality standards or which would imminently result in a violation of water quality standards in the absence of regulation.

(e) Designation from the department that storm water controls are needed for the discharge based on wasteload allocations that are part of total maximum daily loads (TMDLs) developed by the department that address the pollutants of concern.

(f) A discharge, or category of discharges within a geographic area, that is determined by the department to be a significant contributor of pollutants to waters of the state, or to contribute to a violation of water quality standards, or to contribute substantially to the pollutant loadings of a physically interconnected, regulated MS4.

(g) A storm water discharge that is the subject of a petition to the department to require a national permit, and the department determines that the discharger shall apply for a national permit in accordance with subdivision (f) of this subrule.

(2) If a national permit application is required for a municipal separate storm sewer system under subdivision (c), (d), (e), or (f) of this subrule, then each city, village, or township with the power or authority to control storm water discharges to the regulated MS4 shall apply for a national permit. An MS4 owner or operator other than a city, village, or township may cooperate with a permitted MS4 owner or operator so that the terms and conditions of the national permit may be met by the permitted MS4 owner or operator for the other owner or operator's municipal separate storm sewer system or systems in the regulated area. In this case, the MS4 owner or operator that is not a city, village, or township does not need to apply for a national permit. An MS4 owner or operator that is not a city, village, or township that cannot reach a cooperative agreement with the permitted MS4 owner or operator shall apply for a national permit for the MS4 it owns or operates.

(3) A person who is designated by the department to be regulated in accordance with subrule (1)(d), (e), or (f) of this rule shall apply to the department for a national permit within 180 days of receipt of notice from the department that a national permit is needed, unless permission for a later date is granted by the department. This subrule does not apply to storm water discharged from a site of construction activity.

R 323.2189 Referenced federal regulations; definitions; adoption of standards by reference.

Rule 2189. (1) As used in the federal regulations referenced in R 323.2161, the terms "NPDES state" and "NPDES authority" shall mean the department of environmental quality as specified in this rule.

(2) The following federal regulations are adopted by reference in these rules, are available for inspection at the Lansing office of the department of environmental quality, and may be obtained from the Department of Environmental Quality, Water Division, P.O. Box 30273, Lansing, MI 48909, at a cost as of the time of adoption of these rules of 5 cents per page and a labor rate of \$19.20 per hour, or from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost as of the time of the adoption of these rules of ~~\$66.00~~ **\$45.00 for 40 C.F.R. Parts 100-135, \$56.00 for 40 C.F.R. Parts 400-424, and \$61.00 for 40 C.F.R. Parts 425-699;** or via the Internet at

<http://bookstore.gpo.gov/www.access.gpo.gov/nara>:

(a) 40 C.F.R. §122.3(e) (2000).

(b) 40 C.F.R. §122.7. (2000).

(c) 40 C.F.R. §122.21 (2003**5**).

(d) 40 C.F.R. §§122.26 to 27 (2000).

(e) 40 C.F.R. §122.28(b)(2)(v) (2000).

- (f) 40 C.F.R. §§122.34 to 35 (2000).
- (g) 40 C.F.R. §§122.41 to 122.43 (2000).**
- (h) 40 C.F.R. §122.44 (2005).**
- (gi) 40 C.F.R. §§122.44~~5~~ to 122.49 (2000).
- ~~(h) 40 C.F.R. §122, appendix G (2000).~~
- (ij) 40 C.F.R. §~~123 et seq. (1984)~~ §§125.80 to 125.99 (2005), except 40 C.F.R. §§125.89 and 125.98 (2005). “New source” as used in this subdivision is defined in 40 C.F.R. §122.2. “New source” as used elsewhere in these rules shall be as defined in R 323.2103.**
- (jk) 40 C.F.R. §401.11 (2000).
- (kl) 40 C.F.R. §403 (2000).
- (lm) 40 C.F.R. §412 (2003) except that the definition for “land application area” shall be as defined in R 323.2103(4).**
- (n) 40 C.F.R. §451 (2005).**

R 323.2190 National permit for storm water discharge from construction activity.

Rule 2190. (1) Unless the department has required an individual national permit pursuant to the provisions of subrule (3) or (4) of this rule, a point source discharge of storm water from a construction activity will be deemed to have a national permit authorizing the discharge if the criteria of subdivisions **(Aa)** and **(Bb)** of this subrule ~~is~~**are** met. Exception: ~~after March 10, 2003, small construction activities, meaning 1 to 5 acres of disturbed soil as defined in 40 C.F.R. §122.26(b)(15) R 323.2102(h)(ii) or (iii), are automatically deemed to have a national permit authorizing discharge of storm water in accordance with this rule and are not required to meet the filing requirements of subdivision(a) or (b) of this subrule,~~ subrule (2)(j) of this rule, and subrule(5)(b) of this rule. The construction permittee shall do both of the following:

(a) File with the department, on a form approved by the department, notice of coverage pursuant to the provisions of this rule before the initiation of construction activity. The notice of coverage shall include all of the following:

(i) A copy of the individual soil erosion and sedimentation control permit for the site as issued to the construction permittee; or if the construction activity is to be carried out by an authorized public agency, certification by the authorized public agency that an approved control plan exists; or, for part 615 or part 631 permits, a copy of the permit, along with any forms or diagrams pertaining to soil erosion and sedimentation control that were part of the permit application.

(ii) Acknowledgement by the construction permittee that any discharge that is made pursuant to the provisions of this rule shall be in compliance with part 31 of the act and the rules promulgated thereunder.

(iii) A location map and a description of the nature of the construction activity.

(iv) The location of the proposed discharge and identification of the receiving water.

(v) The total area of the site and the area of the site that is expected to undergo construction activity during the life of the project.

(vi) Name and certification number of a certified storm water operator responsible for inspection of the construction activity in accordance with subrule (2)(e) of this rule.

(b) Provide a valid signature of the construction permittee or authorized representative on the notice of coverage. If the construction permittee is a partnership, association, corporation, industry, municipality, state agency, or interstate body, the valid signatory for the notice of coverage shall be determined in accordance with R 323.2114.

(2) A construction permittee that has authorization to discharge under a national permit pursuant to subrule (1) of this rule shall comply with all of the following provisions:

(a) Not directly or indirectly discharge wastes such as discarded building materials, concrete truck washout, chemicals, lubricants, fuels, litter, sanitary waste, or any other substance at the construction site into the waters of the state in violation of part 31 of the act or rules promulgated thereunder.

(b) Be in compliance with a soil erosion and sedimentation control permit for the site or, if the construction activity is carried out by an authorized public agency, the approved control plan, including the selected control measures that are applicable to the site.

(c) Properly maintain and operate the soil erosion control measures.

(d) Have the soil erosion control measures under the specific supervision and control of a storm water operator who has been certified by the department as properly qualified to operate the soil erosion control measures. The certification shall be done in accordance with the requirements of R 323.1251 et seq.

(e) Cause the construction activity to be inspected by a certified storm water operator once per week, and within 24 hours after every precipitation event that results in a discharge from the site, and ensure that any needed corrective actions are carried out. A log of the inspections and corrective actions shall be maintained on file by the construction permittee for review and shall be retained by the construction permittee for a period of 3 years from the date of the inspection or corrective action.

(f) In accordance with the requirements for on-land facilities as set forth in spillage of oil and polluting materials, being part 5 of these rules, provide facilities and comply with reporting procedures for containment of any accidental losses of oil or other polluting materials.

(g) Dispose of solids, sediment, filter backwash, or other waste that is removed from or results from the treatment or control of storm water in compliance with applicable state laws and regulations and in a manner that prevents any waste from entering waters of the state.

(h) Allow the department to enter upon the site at any reasonable time before the expiration of the authorization to discharge as set forth in subrule (5) of this rule, upon presentation of credentials and other documents as may be required by law, for the purpose of inspecting conditions relating to the pollution of any waters or determining compliance with the provisions of this rule.

(i) Upon request, make available for public inspection or provide to the department all reports or logs prepared pursuant to the provisions of this rule.

(j) File a revised notice of coverage in compliance with the provisions of subrule (1) of this rule before any expansion of the construction activity or change in the soil erosion control measures that requires a change in the soil erosion and sedimentation control permit.

(3) The department may require that discharges from a construction activity be authorized by an individual national permit if it has been determined by the department that unlawful pollution cannot be adequately guarded against, and there is or may be water quality degradation that will violate the commission act unless requirements in addition to those in the soil erosion and sedimentation control permit are imposed. A determination by the department for an individual national permit or other additional control constitutes grounds for revocation of the authorization to discharge pursuant to the provisions of this rule.

(4) The department may require that discharges from a construction activity be authorized by an individual national permit if it has been determined by the department that the responsible part 91 permitting entity or authorized public agency is not carrying out a program that is adequate to ensure that the requirements of part 91 of the act are complied with.

(5) The authorization to discharge pursuant to the provisions of this rule expires as follows:

(a) When the soil erosion and sedimentation control permit expires, or is revoked or terminated by the part 91 permitting entity in accordance with the provisions of part 91 of the act and 1969 PA 306, MCL 24.201 et seq., or when the authorized public agency determines that the project has been completed by the stabilization of earth change activity.

(b) Five years from the date of the notice that is filed pursuant to the provisions of subrule (1)(a) of this rule, if the authorization to discharge has not previously expired pursuant to

subdivision (a) of this subrule. This authorization may be extended by filing a new notice in compliance with the provisions of subrule (1)(a) of this rule. The construction permittee shall file a notice of termination with the department, on a form approved by the department, when authorization to discharge expires as set forth in accordance with subdivision (a) of this subrule. The notice of termination shall include the name and address of the construction permittee, the location of the construction site, and the mailing address, if available, and certification that stabilization of earth change activity has been completed or, if the certification cannot be made, the reason why the authorization to discharge has expired.

(6) The department may revoke authorization to discharge pursuant to the provisions of this rule if an individual national permit is required pursuant to the provisions of subrule (3) of this rule or in compliance with R 323.2159.

(7) Nothing in this rule shall be construed to preclude the institution of any legal action or relieve the construction permittee from any responsibilities, liabilities, or penalties to which the construction permittee may be subject pursuant to part 31 of the act or rules promulgated thereunder.

(8) The provisions of this rule are severable, and if any provision of this rule or the application of any provisions of this rule to any circumstances is held invalid, the application of the provisions of this rule to other circumstances and the remainder of this rule shall not be affected by the invalidity.

(9) The construction permittee shall take all reasonable steps to minimize any adverse impact to the surface or groundwaters of the state that result from noncompliance with any of the conditions specified in this rule.

(10) If, for any reason, the construction permittee does not comply with, or will be unable to comply with, any of the conditions that are specified in this rule, the construction permittee shall provide the department with the following information, in writing, within 5 days of becoming aware of the noncompliance or inability to comply:

(a) A description of the noncompliance and its cause.

(b) The period of noncompliance, including exact dates and times, or, if the noncompliance is not corrected, the anticipated time that the noncompliance is expected to continue and the steps taken to reduce, eliminate, and prevent recurrence of the noncompliance.

(11) The provisions of this rule do not convey any property rights in either real or personal property, or any exclusive privileges, authorize any pollution, impairment, or destruction of the natural resources of the state, or the violation of any federal, state, or local laws or regulations, or obviate the necessity of obtaining permits or approvals from other units of government as may be required by law.

(12) The provisions of this rule do not exempt the construction permittee from giving notice to public utilities and complying with each of the requirements of 1974 PA 53, MCL 460.701 et seq.

(13) This rule shall not provide authorization to discharge storm water from construction activity which is mixed with non-storm water, or which is subject to an existing national permit or general permit.

R 323.2197. Cooling water intake structures.

Rule 2197. Facilities that withdraw cooling water from the Great Lakes are defined as facilities located in Michigan that are regulated under 40 C.F.R. §125.91 and which withdraw cooling water from Lakes Erie, Michigan, Huron, or Superior, or from waterways with open fish passage to 1 of these lakes and within 30 miles of the lake.

NOTICE OF PUBLIC HEARING

SOAHR 2004-055
NOTICE OF PUBLIC HEARING
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
Water Bureau

The Michigan Department of Environmental Quality (MDEQ), Water Bureau, will conduct a public hearing on proposed administrative rules promulgated pursuant to Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451), R 323.2101 to R 323.2196. These rules will incorporate federal Phase I and Phase II regulations for cooling water intake structures into Michigan's rules for permitting under the National Pollutant Discharge Elimination System.

The public hearing will be held on March 30, 2006, at 10:00 a.m., at Constitution Hall, 525 West Allegan, Lansing, Michigan 48933.

Copies of the proposed rules (SOAHR 2004-055EQ) can be downloaded from the Internet at: <http://www.michigan.gov/orr>, select Recent and Pending Rule Changes, and then select 2004 under Rules by Year. Copies of the rules may also be obtained by contacting the Lansing office at:

Water Bureau
Michigan Department of Environmental Quality
P.O. Box 30273
Lansing, Michigan 48909-7773
Phone: 517-335-4117
Fax: 517-241-8133
E-mail: drullind@michigan.gov

All interested persons are invited to attend and present their views. It is requested that all statements be submitted in writing for the hearing record. Anyone unable to attend may submit comments in writing to the address above. Written comments must be received by April 20, 2006.

Persons needing accommodations for effective participation in the meeting should contact the Water Bureau at 517-335-4117 one week in advance to request mobility, visual, hearing, or other assistance.

This notice of public hearing is given in accordance with Sections 41 and 42 of Michigan's Administrative Procedures Act, 1969 PA 306, as amended, being Sections 24.241 and 24.242 of the Michigan Compiled Laws. Administration of the rules is by authority conferred on the Director of the MDEQ by Part 31 of Act 451 and Executive Order 1995-18. These rules will become effective seven days after filing with the Secretary of State.

James K. Cleland, Chief
Lansing Operations Division
Water Bureau

PROPOSED ADMINISTRATIVE RULES

SOAHR 2005-007

DEPARTMENT OF LABOR & ECONOMIC GROWTH

DIRECTOR'S OFFICE

PREPAID FUNERAL & CEMETERY SALES

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of labor & economic growth by 2004 PA 21, MCL 328.227.)

Draft January 6, 2006

R 339.11, R 339.21, R 339.22, R 339.23, R 339.24, R 339.31, R 339.32, R 339.33, R 339.34, R 339.35, R 339.36, R 339.37, R 339.41, R 339.42, R 339.43, R 339.45, and R 339.47 are added to the Administrative Code as follows:

PART 1. GENERAL PROVISIONS

R 339.11 Definitions.

Rule 11. (1) As used in these rules:

(a) "Act" means 1986 PA 255, MCL 328.211 et seq., as amended, and known as the prepaid funeral and cemetery sales act.

(b) "Change in ownership," means a change of owners, partners, officers, or directors.

(c) "Department" means the department of labor and economic growth.

(d) "Upgrade" as used in MCL 328.223(4) means the addition of services or increased quality of merchandise, but does not mean a change from cremation to burial.

(e) "Statement" as used in MCL 328.218(1) means a detailed listing of the components required in that section.

(f) "Business structure" means the organizational form in which a business is held including, but not limited to, a sole proprietorship, a partnership, a limited partnership, a corporation, or a limited liability company.

(2) The terms defined in sections 3, 4 and 5 of the act have the same meanings when used in these rules.

PART 2. CONTRACTS

R 339.21 Physical Delivery.

Rule 21. (1) Physical delivery is complete for a grave memorial or urn when it has been permanently inscribed with the name of the person being memorialized.

Urns and grave memorials stored until time of need shall be insured against fire and theft in an amount equal to or greater than their total replacement cost.

(3) When physical delivery and retention are complete for an article of merchandise, that portion of the contract related to the merchandise shall cease to be a prepaid contract under the act. Upon receipt of proof of physical delivery and retention, funds held by the escrow agent shall be disbursed in accordance with MCL 328.222(11). The amount disbursed shall be the *pro rata* share for that item.

R 339.22 Records.

Rule 22. (1) Copies of all prepaid contracts shall be maintained for 36 months after performance, cancellation or revocation of the contract.

(2) Preprinted contracts shall be numbered in sequential order.

R 339.23 Required language.

Rule 23. Executed contracts shall include a paragraph immediately following the paragraph required by MCL 328.225(4) that shall state, "After the death of the contract beneficiary, the contract buyer or the contract buyer's estate may cancel the prepaid contract only where there are no remains of the deceased; where the remains of the deceased cannot be recovered; or where a prepaid contract was not utilized due to lack of knowledge by the person or persons entitled to make funeral arrangements of the existence of the prepaid contract," and shall specify the refund provisions of MCL 328.225(1) or (2), as appropriate.

R 339.24 Commissions.

Rule 24. (1) If a commission has not been taken by a contract seller or provider pursuant to section 12 of the act, and a request is made by a person other than the contract seller or provider to transfer a prepaid contract to another licensed provider, then a commission may be taken as if the contract had been cancelled in accordance with section 13 (1) of the act.

(2) A total commission of not more than 10% of the contract price may be taken, regardless of the number of times a prepaid contract is transferred.

PART 3. STANDARDS OF OPERATION

R 339.31 Escrow of funds for cemetery merchandise.

Rule 31. A cemetery electing to escrow funds as provided in MCL 338.222(2) for cemetery merchandise sold, on or after January 1, 2005, under a retail installment contract, shall escrow cemetery merchandise funds received during each subsequent 12 month period at the trusting level specified for that period, regardless of the date of the contract.

R 339.32 Annual reports requirements.

Rule 32 (1) Each registrant shall submit an annual report for the period of January 1 to December 31 of the previous calendar year to the department, on forms required by the department.

(2) Each report shall be submitted in sufficient time to ensure that the director receives the report by July 15 of the year following the report year.

R 339.33 Extension requests.

Rule 33 A registrant shall submit a written request for extension of the due date for annual reports so the director receives it not later than July 1 of the year following the report year. One extension may be granted for not more than 90 days, upon approval by the department.

R 339.34 Reporting Requirements.

Rule 34. A registrant shall report the following to the department:

- (a) The sale of a prepaid funeral or cemetery sales business, a 10% or more change in ownership, or a change in business structure of a registrant.
- (b) The death of an owner within 30 days of the death. The department shall determine if a new prepaid funeral and cemetery sales registration is required.
- (c) A change of address to the department within 30 days of the change.

R 339.35 Assignment of contracts upon discontinuance of business.

Rule 35. A registrant who discontinues business or whose license is suspended indefinitely, lapsed, or revoked shall do both of the following:

- (a) Assign prepaid contracts to another registrant within 60 days of the event.
- (b) Notify the department and the contract buyers of the assignment within 30 days of the assignment.

R 339.36 Deposit of funds for non-guaranteed or irrevocable contract.

Rule 36. A registrant receiving funds in connection with a non-guaranteed or irrevocable contract shall deposit those funds in a depository within 30 days of receipt.

R 339.37 Investment of funds.

Rule 37. Investments by an escrow agent shall be in accordance with MCL328.222(7). Financial reporting and disbursements for such investments shall be valued for all purposes at fair market value. A registrant shall not deposit funds with an escrow agent that does not act in compliance with this rule.

PART 4. RECORD KEEPING

R 339.41 Receipts journal.

Rule 41 A registrant shall maintain a chronological receipts journal that includes the following for funds received exclusively under the act:

- (a) The date the funds are received.
- (b) The amount of contract funds received.
- (c) The amount of commission funds received.
- (d) The date the contract funds are deposited.
- (e) The name of the buyer and beneficiary.
- (f) The contract number.

R 339.42 Ledger.

Rule 42 (1) A registrant shall maintain a ledger for each prepaid contract sold that includes the following:

- (a) The name and address of the buyer.
- (b) The name and address of the beneficiaries.
- (c) The name and address of the escrow agent.
- (d) The date the funds are received from buyers and escrow agents/depositories.
- (e) The amount of contract funds received from buyers and escrow agents/depositories.
- (f) The amount of commission funds received.
- (g) The date the contract funds are deposited.
- (h) The contract number.
- (i) The type of contract sold, guaranteed or non-guaranteed.
- (j) The contract's total price exclusive of commission.

- (k) The contract's total commission.
- (l) The date the contract is performed, cancelled, or revoked.
- (m) The amount of refund paid if cancelled or revoked, and the date of payment.
- (n) The amount, date, purpose, payee, and check number of all disbursements made to buyers, beneficiaries, providers, registrants, and vendors.
- (2) Ledgers shall be maintained separately, in chronological order, or in sequential contract number order.

R 339.43 Registrant responsibility to provide annual statement.

Rule 43. Unless waived by the contract buyer, the registrant shall provide the annual statement to the contract buyer, as provided in MCL328.222(14).

R 339.45 Other requirements for registrant.

Rule 45. A registrant shall do the following:

- (a) Obtain documentation from an escrow agent with which it contracts showing when the contract funds were deposited, as well as, when and to whom they were disbursed.
- (b) Obtain copies of notices and statements sent to the contract buyers/beneficiaries from the escrow agent.
- (c) Ensure that such documentation as described in subdivisions (a) and (b) is produced and copies are retained.
- (d) Maintain copies of any other notices and statements sent to the buyers/beneficiaries in any capacity.
- (e) Maintain all records in compliance with MCL 328.218(1).

R 339.47 Reporting period.

- Rule 47. (1) The department may require a registrant to produce a list as described in MCL 328.218(1) for any period ending it considers necessary for examination, review, or audit.
- (2) The registrant shall ensure that adequate provisions are included in any escrow agreement necessary to implement this rule.

NOTICE OF PUBLIC HEARING

SOAHR 2005-007
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
BUREAU OF COMMERCIAL SERVICES

PREPAID FUNERAL AND CEMETERY SALES RULES

Rule Set 2005-007
NOTICE OF PUBLIC HEARING
Monday, March 20, 2006
2501 Woodlake Circle Okemos Michigan
Conference Room 3, 1st Floor, 10:00 AM

The Department of Labor and Economic Growth will hold a public hearing on Monday, March 20, 2006, at the Bureau of Commercial Services, 2501 Woodlake Circle, Okemos Michigan in Conference Room 3 at 10:00 AM. The hearing will be held to receive public comments on proposed changes to the Administrative Rules for Prepaid Funeral and Cemetery Sales.

The proposed rule set #2005-007 is to clarify provisions of recent revisions to the Prepaid Funeral and Cemetery Sales Act, and transfer prepaid provisions from the cemetery rules that regulate provisions transferred from the Cemetery Regulation Act.

These rules are promulgated by authority conferred on the Department of Labor and Economic Growth by Prepaid Funeral and Cemetery Sales Act, 1986, PA 255, as amended by 2004 PA 21, effective January 1, 2005. These rules will take effect immediately upon filing with the Secretary of State.

The rules #2005-007 LG are published on the Michigan Government web site at <http://www.michigan.gov/orr> and in the March 15, 2006 issue of the *Michigan Register*. Comments may be submitted to the following address by 5:00 P.M. on Monday, March 27, 2006. Copies of the draft rules may also be obtained by mail or electronic transmission at the following address:

Department of Labor and Economic Growth
Amy Shell, Bureau of Commercial Services
P. O. Box 30018
Lansing MI 48909-7518

Phone: 517/241-9219 FAX: 517/ 241-7539 E-mail: shellal@michigan.gov.

The hearing site is accessible, including handicap parking. People with disabilities requiring additional accommodations in order to participate in the hearing (such as information in alternative formats) should contact the Bureau at 517-241-9249 at least 14 days prior to the hearing date. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. Information at this meeting will be presented by speakers and printed handouts.

PROPOSED ADMINISTRATIVE RULES

SOAHR 2005-016

DEPARTMENT OF LABOR & ECONOMIC GROWTH

DIRECTOR'S OFFICE

MICHIGAN BOILER RULES

Filed with the Secretary of State on
These rules take effect

(By authority conferred on the director of the department of labor & economic growth by sections 4 and 4a of 1965 PA 290, Executive Reorganization Order Nos. 1996-2 and 2003-1, MCL 408.754, 445.2001 and 445.2011)

Draft February 21, 2006

R 408.4012, R 408.4024, R 408.4025, R 408.4027, R 408.4028, R 408.4031, R 408.4032, R 408.4033, R 408.4039, R 408.4045, R 408.4047, R 408.4057, R 408.4058, R 408.4059, R 408.4065, R 408.4073, R 408.4091, R 408.4096, R 408.4103, R 408.4107, R 408.4114, R 408.4119, R 408.4121, R 408.4125, R 408.4127, R 408.4133, R 408.4139, R 408.4163, R 408.4177, R 408.4182, R 408.4197, R 408.4302, R 408.4503, R 408.4507, R 408.4510, R 408.4511, R 408.4512, R 408.4566, R 408.4601, R 408.4626, R 408.4701, and R 408.4711 of the Michigan Administrative Code are amended, R 408.4120 is added to the Code and R 408.4303, R 408.4304, R 408.4518, R 408.4602, R 408.4603, R 408.4604, R 408.4605, R 408.4606, R 408.4607, R 408.4608, R 408.4609, R 408.4610, R 408.4611, R 408.4612, R 408.4613, R 408.4614, R 408.4615, R 408.4616, R 408.4617, R 408.4618, R 408.4619, R 408.4620, R 408.4622, R 408.4623, R 408.4624, R 408.4625, R 408.4627, R 408.4628, R 408.4631, R 408.4637, R 408.4660, R 408.4667, R 408.4689, R 408.4704, R 408.4707, R 408.4727, R 408.4731, R 408.4735, R 408.4739, R 408.4743, R 408.4747, R 408.4750, R 408.4801, R 408.4851, R 408.4853, R 408.4856, and R 408.4893 of the Code are rescinded as follows:

PART 1. GENERAL PROVISIONS

R 408.4012 Definitions.

Rule 12. (1) "Accident" means a sudden and accidental breakdown of a boiler or a part of a boiler that results in physical damage to the boiler which necessitates the repair or replacement of the boiler or a part of the boiler. "Accident" does not mean a breakdown due to any of the following unless a unique or unusual explosion hazard exists as a result of the breakdown:

- (a) Normal erosion.
 - (b) Corrosion.
 - (c) Wastage of metal that requires restoration.
 - (d) Leaking tubes.
 - (e) Weakened metal, such as water legs or handhole areas.
- (2) "Act" means 1965 PA 290, MCL 408.751 et seq.

(3) “Aftercooler” means a device used for lowering the temperature of a boiler blowoff discharge before it enters the building drain.

(4) “Alteration” means any change in the item described on the original manufacturer’s data report that affects the pressure-containing capability of the boiler or its piping. A nonphysical change such as an increase in the maximum allowable working pressure (internal or external) or design temperature of a boiler or its piping is an alteration.

(5) “ASME,” “ASME boiler and pressure vessel code,” “ASME code,” or “code” means the boiler and pressure vessel code of the American Society of Mechanical Engineers, with addenda, as prescribed and approved by the council of the society.

(6) “Authorized inspector” means an individual who is designated as an authorized inspector by an authorized inspection agency, who holds a valid certificate of competency and national board commission with an “A” or “B” endorsement, and who is employed by the authorized inspection agency that assumes responsibility for the individual’s actions.

~~(7) “Blowoff valve” means a valve connected to the boiler for the purpose of reducing the concentration of solids in the boiler or for draining purposes.~~

(87) “Board of boiler rules” or “board” means the board created by the act.

(98) “Boiler assembler” means a corporation, company, partnership, or individual who assembles a boiler that has been delivered in pieces. For ASME code section I power boiler assemblies, a boiler assembler shall possess the appropriate code symbol stamps.

~~(109)~~ “Boiler blowoff piping” means the piping, fittings, and valves from the boiler to the blowoff tank, blowoff separator, or other safe point of discharge through which the water in the boiler may be blown out under pressure, except for drains such as those used in water columns, gauge glasses, or piping to feed water regulators and similar devices.

(140) “Boiler blowdown vessel” means an unfired pressure vessel into which water is discharged above atmospheric pressure from a boiler blowoff line.

(121) “Boiler installation” means the installation of a boiler, including all connected piping, valves, fittings, flanges, firing equipment, controls, appurtenances, and auxiliaries. The term includes the field assembly of boilers.

(132) “CSD-1” means the ASME code for controls and safety devices for automatically fired boilers.

~~(1-4-3)~~ “Certificate of competency” means a certificate issued to a person who has passed an examination for inspectors prescribed by the board of boiler rules.

(154) “Chief inspector” means the chief boiler inspector appointed under the act.

(165) “Condemned boiler” means a boiler that has been inspected and declared unsafe or rejected for use by an inspector who is qualified to take such action and who has applied a stamping or marking designating its rejection.

(16) “Department” means the department of labor and economic growth.

(17) “Deputy inspector” means an inspector who **is licensed under the act**~~holds a license and who is appointed by the director. under the act.~~

(18) “Existing installation” means and includes any steam boiler constructed, installed, placed in operation, or contracted for before August 10, 1917, or any hot water heating or supply boiler constructed, installed, placed in operation, or contracted for before the effective date of these rules.

(19) “External inspection” means an inspection which is conducted while the boiler is under pressure and which does not involve examination of the internal surfaces of the pressure parts of the boiler.

(20) “Field assembly” means assembling prefabricated boiler pressure parts without field welding or riveting.

(21) “Field erection” means the erecting and assembling of boiler parts by welding, riveting, or other fabrication processes.

(22) “Flash tank” means a closed vessel equipped with internal baffles or an apparatus for the purpose of separating moisture from flash steam as it passes through the vessel.

(23) “Hobby” means an interest or activity that a person pursues in his or her leisure time without compensation.

(24) “Hot water heating and hot water supply boiler” means a boiler that operates at pressures of not more than 160 psi or temperatures of not more than 250 degrees Fahrenheit, at or near the boiler outlet.

(25) “Inspector” means an individual who holds a valid certificate of competency and national board commission.

~~(26) “Internal furnace” means a furnace in a boiler consisting of a straight or corrugated flue.~~

(27) “Internal inspection” means an inspection made when a boiler is shut down and handholes or manholes are opened for inspection of the interior.

~~(28) “Internally fired boiler” means a fire tube boiler that has an internal plate type, water-cooled furnace.~~

(29) “Licensed boiler installer” means a person **licensed under the act** ~~to who~~ is engaged in the business of making piping connections to a boiler ~~or a person who is engaged in the business of field-assembling boilers.~~

~~(30)~~ (28) “Licensed boiler repairer” means a person **licensed under the act** ~~to who~~ is engaged in making or supervising all phases of boiler repair, alteration, or field erection.

(29) **“Labeled” means devices, equipment, appliances, or material to which have been affixed a label, seal, symbol, or other identifying mark of a nationally recognized testing laboratory, inspection agency, or other organization concerned with product evaluation that maintains periodic inspection of the production of the items and by whose label the manufacturer attests to compliance with applicable nationally recognized standards.**

(30) “Michigan special” means a boiler that is not built in compliance with the code. A boiler is a noncode boiler if it is not stamped with the ASME code symbol stamp.

(31) “Miniature boiler” means a power boiler that does not have any of the following:

- (a) An inside diameter of the shell of more than 16 inches.
- (b) A working pressure of more than 100 psig.
- (c) A gross volume of more than 5 cubic feet.
- (d) More than 20 square feet of heating surface.

(32) **“Listed” means equipment, appliances, or material included in a list published by a nationally recognized testing laboratory, inspection agency, or other organization concerned with product evaluation that maintains periodic inspection of production of listed equipment, appliances, or materials, and whose listing states either that the equipment, appliances, or material meets nationally recognized standards or has been tested and found suitable for use in a specified manner. The authority having jurisdiction shall utilize the system employed by the listing organization to identify a listed product.**

(33) “Miniature locomotive boiler” means a miniature hobby steam locomotive boiler which operates on a narrow gauge track that is less than 24 inches wide and which is for public display or use.

(34) “NBIC” means national board inspection code.

(35) “New boiler” means a boiler constructed, installed, placed in operation, or contracted for after July 1, 1966.

(36) “Nonstandard boiler” means a boiler that does not bear the national board stamping or the stamp of any state or political subdivision which has adopted a standard of construction equivalent to that required by the board of boiler rules.

(37) “Owner or user” means a person, firm, partnership, or corporation that owns or operates a boiler within this state.

(38) “Portable boiler” means a boiler which is primarily intended for temporary location and which is, by its construction and usage, obviously portable.

(39) “Reinstalled boiler” means a boiler which is removed from its original setting and which is reinstalled at the same location or reinstalled at a new location.

(40) “Rental boiler” means a boiler which is in temporary use for not more than 1 year and which may or may not be installed inside a boiler room, temporary room, or temporary shed or without external covering.

(41) “Repair” means the work necessary to restore a boiler or its piping to a safe and satisfactory operating condition.

(42) “Safe point of discharge” means a point of discharge that will protect personnel and property from injury due to discharge.

(43) “Special inspector” means ~~ana~~ **a boiler** inspector who holds a license **in the state of Michigan** and who is regularly employed by an insurance company authorized to insure against a loss from boiler accidents in this state or ~~means~~**by any city that is exempt under the act and** has an authorized boiler inspection department.

(44) “Standard boiler” means a boiler that bears the stamp of the national board of boiler and pressure vessel inspectors or of another state or political subdivision which has adopted a standard of construction equivalent to that required by the board of boiler rules of this state.

(45) “Traction boiler” means a boiler designed for the express purpose of pulling farm equipment or to convert steam power into flywheel energy driving farm apparatus such as threshers, saws, or grinding equipment.

(46) “Used boiler” means a boiler that is being reinstalled by the same owner.

(47) “Water heater” means a heater for use in commercial or industrial sizes providing corrosion resistance for supplying potable hot water at pressures not exceeding 160 psi or temperatures not exceeding 210 degrees Fahrenheit. A water heater that does not exceed any of the following is exempt from these rules:

- (a) A heat input of more than 200,000 BTU per hour.
- (b) A water temperature of more than 210 degrees Fahrenheit.
- (c) A nominal water-containing capacity of more than 120 gallons.

R 408.4024 Adoption of national board inspection code (NBIC) by reference.

Rule 24. (1) The owner shall ensure the inspection, repair, and alteration of boilers, ~~and~~ piping, ~~and~~ **blowdown vessels** is in accordance with the national board inspection code, ~~2001-2004 edition, and its addenda, and 2005 addenda~~ except as modified by these rules. ~~The national board inspection code and 2005 addenda are~~ adopted by reference in these rules and **are available for inspection** ~~may be reviewed~~ at the ~~Okemos office of the Michigan Department of Consumer and Industry Services-Labor & Economic Growth, Bureau of Construction Codes and Fire Safety, Boiler Division, 6546 Mercantile Way, Lansing, Michigan 48911 or~~ **The code may be purchased** from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, ~~or from the Department of Consumer and Industry Services, Bureau of Construction Codes, 2501 Woodlake Circle, Okemos, Michigan 48864,~~ at a cost as of the time of adoption of these **amendatory rules for a total of \$70.00**~~150.00 each~~.

(2) The accreditation programs described in the NBIC **for repairs and alterations to pressure retaining items is mandatory for repairs to all power boilers and high pressure high temperature water boilers and alterations to any boiler not exempt by these rules.** ~~are not mandatory, but are accepted for use in the state; however, all boiler repairers~~ **Repair companies in possession of a certificate of authorization issued by the national board of boiler and pressure vessel inspectors to repair and alter pressure retaining items shall have in their employ an individual with an appropriate class repairer** ~~obtain a license from issued by the boiler division of the department of consumer and industry services. Repair~~

companies not currently in possession of the certificate of authorization or a certificate of authorization issued by ASME shall have 1 year from the date of adoption of this rule to secure the certificate. Companies currently in possession of a valid certificate issued by ASME have until the next certificate review or 1 year, whichever is greater, to secure the certificate of authorization identified above. The board may waive the time requirement if appropriate justification is presented.

(3) Where the text of the NBIC refers to the “certificate holder,” the reference shall apply to all licensed boiler repairers, except when the reference is in relation to completion of NBIC forms and NBIC stamping, **the reference shall refer to repair companies in possession of a valid certificate of authorization issued by the national board of boiler and pressure vessel inspectors to repair and alter pressure retaining items.** ~~A licensed repairer is not required to apply the national board “R” symbol stamp to repair and alteration nameplates.~~

(4) The standard welding procedures referenced in the NBIC are accepted for use in this state, but are not mandatory. A licensed boiler repairer who elects to use 1 or more of the standard welding procedures **shall** ~~may, in place of the filing requirement in R 408.4631~~ file a list of the standard welding procedure identification numbers with the boiler division of the department of consumer and industry services before conducting any repairs or alterations requiring welding.

R 408.4025 ASME code; adoption by reference.

Rule 25. (1) A boiler shall be constructed as prescribed by these rules and the ASME boiler and pressure vessel code, ~~2001~~**2004** edition, and its **2005** addenda. Sections I, II, III, IV, V, VIII, IX, ~~X,~~ and XI, of the code, ~~the 2005 and addenda and ASME B31.1-2004 Power Piping~~ are adopted by reference in these rules and ~~may be reviewed~~**are available for inspection** at the ~~Okemos office of the Michigan Department of Consumer and Industry Services~~**Labor & Economic Growth, Bureau of Construction Codes and Fire Safety, Boiler Division, 2501 Woodlake Circle, Okemos**~~6546 Mercantile Way, Lansing Michigan 48864~~**48911 or from the ASME International, 22 Law Drive, Fairfield, New Jersey 07007.** ~~The code may be purchased at a cost as of the time of adoption of these amendatory rules of \$7,900.00~~**10,900.00 and \$265.00 respectively.** ~~from the ASME International, 22 Law Drive, Fairfield, New Jersey 07007, or from the Michigan Department of Consumer and Industry Services, Bureau of Construction Codes, 2501 Woodlake Circle, Okemos, Michigan 48864.~~

(2) The board may accept pressure-retaining items which have been constructed to standards other than ASME standards and which have been accepted by application of the national board of boiler and pressure vessel inspectors’ criteria for registration procedure.

(3) The owner shall not recalculate design maximum allowable working pressures based on ASME codes published after 1998 for boilers in-service before December 31, 1998.

R 408.4027 Adoption; ASME code CSD-1.

Rule 27. (1) The owner shall ensure that the assembly, maintenance, operation, and testing of controls and safety devices is in accordance with **manufacturer’s instructions and ASME code CSD-1, 2001**~~2004~~ edition, and its **2005** addenda, except as modified by these rules. The code and ~~the 2005 addenda~~ are adopted by reference in these rules and ~~may be reviewed at the Okemos office of~~**are available for inspection at the Michigan Department of Consumer and Industry Services**~~Labor & Economic Growth, Bureau of Construction Codes and Fire Safety, Boiler Division, 2501 Woodlake Circle, Okemos~~**6546 Mercantile Way, Lansing, Michigan 48864**~~48911 or from the American Society of Mechanical Engineers, 22 Law Drive, Fairfield, New Jersey 07007, at a cost as of the time of adoption of these amendatory rules of \$65.00.~~**The code may be purchased at a cost as of the time of adoption of these rules of \$55.00 from the American Society of Mechanical Engineers, 22 Law Drive, Fairfield, New Jersey 07007,**

or from the Michigan Department of Consumer and Industry Services, Bureau of Construction Codes, Boiler Division, 2501 Woodlake Circle, Okemos, Michigan 48864.

(2) An owner or user of an automatic boiler system shall ensure that the **assembly, maintenance and testing of controls and safety devices is conducted by personnel of a company, licensed with the appropriate mechanical contractor and boiler installer licenses, for the size of the boiler being tested.**in accordance with the following minimum requirements:

Item	Frequency	Personnel	Remarks
Burner/combustion controls	Annual	Service technician	Manufacturer's instruction
Low water fuel cut off	Monthly	User/operator	Slow drain test until boiler shuts down (SEE NOTE 1)
High/operating safety limits	Annual	Service technician	Manufacturer's instruction
Safety valves	Monthly	User/operator	Manually with 75% of set pressure on low pressure boiler, or tested
	Annual		boiler, or tested
	high pressure		by manufacturer's representative

Note 1: An alternate test may be conducted on hot water heating boilers if acceptable to the inspector.

(3) An owner or user of an automatic boiler system shall ensure that testing is conducted in accordance with the manufacturer's instruction. Personnel who conduct the testing are not required to be licensed under the act. The owner or users shall provide the inspector, at the time of certificate inspection, with evidence showing what tests have been completed **annually. The evidence shall be a dated and signed service report or check list, listing each control and safety device tested with the manufacturer's name, model number, set point, and actual operational test point. An example of a report or check list may be found in CSD-1 2004 edition, appendix C. If an owner does not provide the inspector with the required evidence of annual testing for each year between certificate inspections, then the inspector may issue a certificate of inspection for a term less than that stated in R 408.4057.**The inspector may require additional testing if deemed necessary.

(4) The owner, user, or operator of a boiler system shall ensure that the daily, weekly, and monthly operational checks are performed and documented pursuant to the manufacturer's instructions and these rules. CSD-1 2004 nonmandatory appendix D contains a recommended checklist for additional information on periodic checks.

R 408.4028 Manufacturer's data reports; filing.

Rule 28. A manufacturer's data report for boilers shall be signed by a ~~licensed~~an authorized inspector and shall be filed by the manufacturer with the chief inspector before installation. A data report that is signed by a ~~licensed~~an authorized inspector and the ASME stamp on the boiler denotes that the boiler has been constructed in accordance with these rules. If a boiler is of special design, blueprints showing details of the

proposed construction shall be submitted to the chief inspector and his or her approval shall be secured before construction is started.

R 408.4031 Installation and reinstallation of boilers.

Rule 31. The owner shall ensure that the installation of a new boiler or a reinstalled boiler is in accordance with the requirements of these rules and the ASME boiler and pressure vessel code, ~~2001~~**2004** edition, which is adopted by reference in R 408.4025.

Exception: The ASME code requirement for the completion of a P4B data report for the installation of mechanically assembled boiler external piping is not required.

R 408.4032 Non-boiler external piping; power boilers; adoption of standards by reference.

Rule 32. (1) The owner shall ensure that the installation of piping not covered by the ASME boiler and pressure vessel code, section I, ~~2001~~**2004** edition, is installed as prescribed by the ASME code for pressure piping, B31.1, ~~2001~~**2004** edition and its **2005 addenda adopted by reference in R 408.4025.** ~~The code for pressure piping is adopted by reference in these rules and may be reviewed at the Okemos office of the Department of Consumer and Industry Services, Bureau of Construction Codes, Boiler Division, 2501 Woodlake Circle, Okemos, Michigan 48864. The code may be purchased at a cost as of the time of adoption of these rules of \$195.00 from the ASME International, 22 Law Drive, Fairfield, New Jersey 07007, or from the Department of Consumer and Industry Services, Bureau of Construction Codes, 2501 Woodlake Circle, Okemos, Michigan 48864.~~

(2) The owner of a chemical plant or petroleum refinery shall comply with ~~the requirements of subrule (1) of this rule or shall ensure the installation is installed as prescribed by the ASME code for chemical plants and petroleum refineries, B31.3, 1999~~**2002 edition and its addenda.**

(3) A licensee under this rule is not required to possess an ASME code symbol stamp, but shall hold a valid installer's license.

(4) The owner shall ensure that the installation of all of the following piping is in accordance with ~~the requirements of subrule (1) of this rule:~~

- (a) Blowoff piping beyond the second valve out to the safe point of discharge.
- (b) Steam piping out to the load.
- (c) Feed-water piping from the pump.
- (d) Condensate piping.

R 408.4033 Permits; documentation for installation, reinstallation, **alteration**, and repair of boilers, boiler external piping, and non-boiler external piping.

Rule 33. (1) All of the following provisions apply to **installation** permits:

(a) A person shall not install, ~~or~~ reinstall, ~~alter, or repair~~ a boiler without holding a proper license and first securing a permit from the boiler division ~~of the department of consumer and industry services~~. **The licensee applying for the permit shall ensure that work does not proceed until an approved permit has been secured.**

(b) A person shall not install ~~repair~~, or replace welded pipe without holding a proper license and first securing a permit from the boiler division ~~of the department of consumer and industry services~~. **The licensee applying for the permit shall ensure that work does not proceed until an approved permit has been secured.**

(c) A person shall not install, ~~repair, or replace~~ nonwelded pipe without holding a proper license. A permit is not required.

(2) All of the following provisions apply to repair **and alteration permits or reports:**

(a) A person shall not alter or repair a boiler without holding a proper license and first securing a permit from the boiler division of the department. The licensee applying for the permit shall ensure that work does not proceed until an approved permit has been secured, except as provided by section 18 of the act.

(b) A person shall not repair or replace welded piping without holding a proper license and first securing a permit from the boiler division of the department. The licensee applying for the permit shall ensure that work does not proceed until an approved permit has been secured, except as provided for in section 18 of the act.

(c) A person shall not replace non-welded piping without holding a proper license. A permit is not required.

(d) A person shall not perform welded repairs to non-welded piping without holding a proper license and first securing a permit from the boiler division of the department. The licensee applying for the permit shall ensure that work does not proceed until an approved permit has been secured, except as provided for in section 18 of the act.

~~(ae) A licensee who makes welded repairs to boilers or boiler external piping requiring the use of the national board "R" symbol stamp shall furnish the boiler division of the department of consumer and industry services, with an original and 2 copies of a completed form prescribed by the boiler division~~ **(ae) A licensee who makes welded repairs to boilers or boiler external piping requiring the use of the national board "R" symbol stamp shall furnish the boiler division of the department of consumer and industry services, with an original and 2 copies of a completed form prescribed by the boiler division 1 copy of the approved permit application, along with reports as required by the NBIC, upon completion of the work.**

~~(b) a licensee who makes nonwelded repairs to boilers shall furnish the boiler division, department of consumer and industry services with an original and 2 copies of a completed for prescribed by the boiler division.~~

(ef) A public utility or industrial plant that has been **granted exemption** under section 23 of the act that makes a welded repair to a boiler or boiler external piping, as defined in section I of the ASME code, shall furnish the boiler division ~~of the department of consumer and industry services~~ with a completed repair report on forms prescribed by the boiler division.

(dg) A public utility or industrial plant that has been **granted an exemption** under section 23 of the act that makes a welded repair to non-boiler external piping shall maintain records of the repairs and make the records available for review as required by the board of boiler rules.

(h) **A permit is required for a change in use of an existing boiler or replacement by mechanical methods, without welding, of sections in sectional boilers; heat exchangers; feed water heater or economizer; and, tube bundles. A licensee replacing boiler components required by these rules to be code symbol stamped and national board registered shall provide the boiler division of the department with documentation supporting compliance.**

(3) **Any changes in the scope of work stated on the original permit application shall be submitted to the inspector for review and approval and reported to the boiler division.**

R 408.4039 Permits to alter boiler, piping, or vessel.

Rule 39. (1) ~~The boiler division of the department of consumer and industry services may issue a permit to alter a boiler, piping, or vessel subject to these rules only to a Michigan-licensed boiler repairer who possesses a valid certificate of authorization from the national board of boiler and pressure vessel inspectors for alterations or the ASME boiler and pressure vessel committee to build the type of boiler, piping, or vessel being altered. Drawings and calculations covering all details of the proposed alteration shall accompany the application for a permit to alter.~~

(2) ~~The licensed repairer shall ensure that alterations comply with the NBIC or section of the ASME code under which the original boiler, piping, or vessel was constructed, including any service restrictions, or later~~

~~editions of the ASME code that are compatible with the nature of the alteration~~**perform the alteration in accordance with the NBIC.**

~~(3) An inspector who holds a valid national board commission and who is otherwise qualified as required by these rules shall make the required inspections. The inspector shall authorize the proposed alteration before it is undertaken.~~

~~(-4-3)~~ The licensed repairer who makes the alteration shall prepare a report on forms prescribed by the boiler division **of the** department. ~~of consumer and industry services~~ The licensed repairer shall furnish an original and 2 copies of the report to the boiler division **of the** department ~~of consumer and industry services~~, and upon request, 1 copy of the report to the boiler owner and user. The report shall clearly indicate what changes have been made to the original construction. The report shall show, in the spaces provided, the manufacturer's serial number of the boiler, the national board number, if assigned, and the Michigan serial number assigned.

~~(54)~~ The licensed repairer who makes the alteration shall prepare and attach a nameplate that complies with the requirements of the NBIC. ~~A licensed repairer is not required to apply the national board "R" symbol stamp to the alteration nameplate.~~

R 408.4045 Registration of boilers.

Rule 45. **(1)** Within 6 months from the effective date of these rules, all owners or users of boilers and their installations now in use or installed ready for use in the state shall report ~~to~~ the chief inspector on forms prescribed by the department, giving the location, type, capacity, age, and date of installation.

(2) Before transfer of ownership of a boiler is complete, the current owner shall assure all invoices for inspection certificates and inspections for services rendered under his or her ownership are paid in full. Upon completion of transfer of ownership, the new owner of a boiler shall notify the boiler division of the department of change in ownership of a boiler or change in ownership of a location where a boiler is installed. Upon written notification, a new certificate of inspection shall be issued in the name of the new owner.

(3) A boiler owner or user shall notify the boiler division of the department immediately when his or her boiler insurance has been discontinued.

R 408.4047 Exempt boilers.

Rule 47. These rules do not apply to any of the following:

- (a) A boiler under federal control.
- (b) A swimming pool heater, open car wash heater, and similar types of equipment which do not have intervening valves on the return or discharge piping, which do not have a reduction in pipe size in the return or discharge piping, and which do not generate more than normal circulating pump pressure.
- (c) A miniature steam or marine engine used for a hobby.
- (d) A boiler used in the power plant of a self-propelled vehicle designed primarily for transportation of persons or property on a highway, except for a vehicle used exclusively on stationary rails or tracks.
- (e) A boiler used on a mint farm for mint processing purposes.
- (f) A nonvaporizing, organic fluid boiler if the boiler meets all of the following criteria:
 - (i) The system is vented and does not have valves or restrictions in the pipe between the boiler and the vent.
 - (ii) The vent pipe is sized so that the thermal expansion of the fluid will not result in an increase in pressure on the system, which is verifiable with engineering data.
 - (iii) The owner or user provides the boiler division **of the** department ~~of consumer and industry services~~, with calculations performed by an engineer, which verify that pressure due to thermal expansion cannot exist in the boiler as installed.

(g) A low pressure steam boiler that has a volume of less than 5 cubic feet and that does not have piped feed connections.

R 408.4057 Boiler inspection.

Rule 57. (1) **Once a boiler has been inspected by the chief or deputy inspector and the boiler and its installation approved, all certificate inspections shall be conducted in accordance with the NBIC and these rules by an inspector who is properly licensed to inspect boilers in this state in accordance with the following provisions:** ~~shall thoroughly inspect a boiler that is used or proposed to be used in this state as to its construction, installation, and condition as follows:~~

- (a) A power boiler, process boiler, or high-pressure, high-temperature water boiler shall receive a certificate inspection annually and shall also be externally inspected annually, while under pressure, within 6 months from the date of the internal inspection.
 - (b) A low-pressure steam or vapor heating boiler shall receive a certificate inspection biennially.
 - (c) Hot water heating and hot water supply boilers shall receive a certificate inspection triennially, with an internal inspection at the discretion of the inspector.
 - (d) A nonvaporizing, organic fluid boiler that is not exempt under these rules shall receive an external certificate inspection triennially.
 - (e) A miniature hobby locomotive boiler shall receive a certificate inspection annually.
 - (f) A grace period of 2 months beyond the periods specified in subdivisions (a) to (e) of this subrule may lapse between certificate inspections, and the board may permit longer periods between certificate inspections.
 - (g) Internal inspection of cast iron boilers shall be at the discretion of the inspector.
- (2) The certificate inspection shall be an internal inspection if construction allows, otherwise the certificate inspection shall be as complete an inspection as possible unless specified otherwise under this rule.
- (3) The chief inspector, deputy inspector, or a special inspector provided for in the act shall make the inspections specified in this rule.
- (4) If, at the discretion of the inspector, a hydrostatic test is necessary, the boiler owner or user shall ensure that the test is performed in the presence of the inspector.

R 408.4058 Extension of internal inspection certificate to 24 months.

Rule 58. (1) An internal boiler inspection may be increased from an annual inspection to a 24-month inspection frequency by approval of the board of boiler rules. **An employee delegated responsible individual employed** by the utility or industrial facility shall apply for the extension. The following information shall be addressed by plant orders, procedures, or policies:

- (a) Operator training.
 - (b) Boiler maintenance.
 - (c) Water chemistry.
 - (d) Operating parameters.
 - (e) Chemical cleaning schedule.
 - (f) Protective devices.
 - (g) Boiler external inspection.
 - (h) Testing of pressure relief valves in accordance with the NBIC. Repairs shall be conducted by the valve manufacturer or a “VR” stamp holder.**
- The information may be contained in 1 document or several if 1 document contains references to all other documents addressing the required information.

(2) The plant owner shall establish a review committee. The inspector shall be a member of the committee. The purpose of the committee is to determine the acceptability of a boiler to operate safely for a 24-month period. The committee shall have access to and review all information pertaining to the past operation, maintenance, and repair of the boiler. The review shall be conducted within 30 days after the internal inspection. The committee may decrease the period of time the boiler may operate, but shall not extend the period beyond 24 months. The grace period provided under R 408.4057 does not apply to this rule. The inspector shall indicate the next inspection due date on his or her inspection report to the boiler division **of the department**.

(3) An external inspection of the boiler shall be conducted while under pressure, within 12 months of the internal inspection.

R 408.4059 Notification for inspection.

Rule 59. The owner or user shall prepare each boiler for internal inspection **in accordance with the NBIC and these rules** and shall prepare for and apply a hydrostatic pressure test, whenever necessary, on the date specified by the chief inspector, deputy inspector, or special inspector.

R 408.4065 Examinations for inspector licenses; place and time.

Rule 65. Examinations for boiler inspector licenses and certificates of competency shall be held at ~~the office of the director or at any~~ a location to be selected by the ~~board~~ **boiler division of the department**, 4 times each year, ~~namely,~~ **on** the first Wednesday and Thursday in March, June, September, and December.

R 408.4073 Examination fee for boiler inspector's license.

Rule 73. A fee prescribed by R 408.4038 shall be charged for each applicant taking the examination for boiler inspector's license and shall accompany the application filed with the department. ~~of consumer and industry services~~ The fee entitles the applicant to take the examination twice if necessary. An additional fee prescribed by R 408.4038 shall accompany each subsequent application.

R 408.4091 Application for boiler installer's license.

Rule 91. (1) An application for a boiler installer's license shall be on a form provided by the boiler division **of the department**. ~~of consumer and industry services~~ The applicant shall state the name of the business, firm, partnership, or corporation that the applicant intends to represent in the business of installing boilers and shall provide evidence of his or her past experience in the installation of boilers and evidence of his or her workmanship and engineering skills that would qualify the applicant for examination and licensing.

(2) An applicant for a boiler installer's license shall have not less than 5 years of experience in all phases of boiler installation in the class of license for which the applicant is applying. A credit of 2 years of experience towards the 5 years of experience may be given for 2 years of experience in the design, construction, manufacture, or inspection of boilers.

(3) The boiler division of the department ~~of consumer and industry services~~ may verify installations required to be reported on the application to establish the applicant's minimum practical installation experience in the applicant's desired license classification.

R 408.4096 Filing of welding procedures.

Rule 96. (1) If welding is employed in the installation or reinstallation of a boiler or piping, then the licensed installer shall file welding procedure specifications and the procedure qualification reports qualified in accordance with the requirements of ASME code section IX, welding and brazing

qualifications, with the boiler division ~~of the department of consumer and industry services~~, before conducting any installation requiring welding.

(2) A licensed installer who utilizes welding in the installation or reinstallation of boilers or piping shall have available, for the inspector's review, welding procedure specifications and welder performance qualification records to be used or that were used in the installation or reinstallation.

R 408.4103 Examination for boiler installer's license.

Rule 103. (1) An applicant for a boiler installer's license shall be required to take an examination approved by the board of boiler rules. The examination will be held quarterly at a location determined by the boiler division ~~of the department of consumer and industry services~~. **A score of 70% is required to pass the examination. A passing score on the examination is valid for 3 years. If a license is not applied for in that time, then an applicant shall file a new application for examination.**

(2) A licensee wishing to upgrade his or her license to a higher classification shall **maintain his or her current license in good standing for a minimum of 1 year and** take the examination prescribed in subrule (1) of this rule. **A licensee may only upgrade a license 1 classification at a time.**

R 408.4107 Annual renewal of boiler installer's license; change of business affiliation.

Rule 107. (1) A boiler installer's license shall be renewed annually upon payment of a fee as prescribed by R 408.4038.

(2) An installer's license shall expire on December 31 of each year and shall be renewed. An application for renewal shall be submitted to the **boiler division of the department of consumer and industry services**, ~~boiler division~~, between September 30 and December 31. A license that is not renewed by January 1 shall be voided and may be reinstated only upon application for reinstatement and payment of both the renewal fee and a reinstatement fee of \$75.00. A person requesting renewal of a license within 3 years after the license is voided pursuant to this subrule is not subject to reexamination for the license, but ~~is required to~~ **shall** pay both the reinstatement fee and the annual license renewal fee for the current renewal year. A person who fails to renew a license for 3 consecutive years shall ~~be required to~~ meet the requirements of, and take an examination for, the class of license sought.

(3) A licensee who changes business affiliation shall notify the chief inspector, on a form provided by the boiler division **of the department**, of the name and address of the new business affiliate under which the licensee intends to use his or her license. A fee of \$20.00 shall accompany the notification form.

R 408.4114 Inspection of components and systems in a nuclear power plant.

Rule 114. (1) Preservice (baseline) inspection, in-service inspection, repair, replacement, modification, alteration, examination, testing, records, and reports of individual nuclear components, parts, appurtenances, piping, supports, nuclear systems, applicable associated auxiliary systems, and complete nuclear power plants that are in compliance with all of the requirements of the construction code, at the point in time the requirements have been completed, irrespective of the physical location, shall be as prescribed in section XI, rules for in-service inspection of nuclear power plant components, of the ASME boiler and pressure vessel code. ~~The specific edition and addenda of ASME code section XI which shall be followed is that required by 10 C.F.R. part 50.~~ **A copy of the current edition of section XI may be inspected is available for inspection at the Okemos office of the Michigan Department of consumer and industry services Labor & Economic Growth, bBureau of eConstruction eCodes and Fire Safety, boiler division 6546 Mercantile Way, Lansing, 48911 or Section XI may be purchased at a cost as of the time of adoption of these rules of \$370.00 from the ASME International, 22 Law Drive, Fairfield, New Jersey 07007, at a cost as of the time of adoption of these amendatory rules of \$495.00. or from the Michigan Department of Consumer and Industry Services, Bureau of Construction Codes, 2501 Woodlake Circle, Okemos, Michigan 48864**

(2) The owner of a nuclear power plant shall file inspection plans and schedules, pump and valve testing programs, and requests for relief from section XI of the ASME code requirements with the boiler division of the department. ~~of consumer and industry services~~

(3) The nuclear power plant shall maintain compliance with requirements, as prescribed by the Nuclear Regulatory Commission.

R 408.4119 Application for boiler repairer's licenses.

Rule 119. (1) An application for a boiler repairer's license shall be on a form provided by the boiler division ~~of the department. of consumer and industry services~~ The applicant shall state the name of the business, firm, partnership, or corporation that the applicant intends to represent in the business of repairing boilers and shall give evidence of his or her past experience in the repair of boilers and evidence of his or her workmanship and engineering skills that would qualify the applicant for examination and licensing.

(2) An applicant for a boiler repairer's license shall have ~~had not less than~~ **at least** 5 years of experience in all phases of boiler repair in the class of license for which the applicant is applying. A credit of 3 years of experience towards the 5 years of experience will be given for 3 years of experience in the design, construction, manufacture, or inspection of boilers.

(3) The boiler division of the department ~~of consumer and industry services~~ may verify repairs required to be reported on the application to establish the applicant's minimum practical repair experience in the applicant's desired license classification. Copies of the boiler division inspection reports of the repairs shall be made part of the application.

R 408.4120 Filing of welding procedures.

Rule 120. (1) If welding is employed in the repair, replacement, or alteration of a boiler or piping, then the licensed repairer shall file welding procedure specifications and procedure qualification reports qualified in accordance with ASME code section IX, welding and brazing qualifications, with the boiler division of the department, before conducting any welding.

(2) A licensed repairer who utilizes welding in the repair, replacement, or alteration of boilers or piping shall have available, for the inspector's review, welding procedure specifications and welder performance qualification records at the work site or other mutually agreed upon location.

R 408.4121 Examination for boiler repairer's license; establishment; administration; nuclear repairer license applicant; certificate of authorization; examination.

Rule 121. (1) The examination for a boiler repairer's license shall be approved by the board of boiler rules. The examination will be held quarterly at a location determined by the boiler division ~~of the department. of consumer and industry services~~

(2) An applicant wishing to upgrade his or her license to a higher classification shall take the examination prescribed in subrule (1) of this rule.

(3) The director, upon the request of a company in possession of a valid ASME "N" type certificate of authorization or the national board of boiler and pressure vessel inspectors "NR" certificate of authorization, shall issue, to an individual of the company, a license as a nuclear repairer if the individual, before receiving his or her license, satisfactorily passes the examination prescribed in subrule (1) of this rule.

R 408.4125 Annual renewal of boiler repairer's license; change of business affiliation.

Rule 125. (1) A boiler repairer's license shall be renewed annually upon payment of a fee as prescribed by R 408.4038.

(2) A repairer's license shall expire on December 31 of each year and shall be renewed. An application for renewal shall be submitted to the **boiler division of the** ~~department of consumer and industry services,~~

~~boiler division~~, between September 30 and December 31. A license that is not renewed by January 1 shall be voided and may be reinstated only upon application for reinstatement and payment of both the renewal fee and a reinstatement fee of \$75.00. A person requesting renewal of a license within 3 years after the license is voided pursuant to this subrule is not subject to reexamination for the license, but ~~is required to~~ **shall** pay both the reinstatement fee and the annual license renewal fee for the current renewal year. A person who fails to renew a license for 3 consecutive years shall ~~be required to~~ meet the requirements of, and take an examination for, the class of license sought.

(3) A licensee who changes business affiliation shall notify the chief inspector, on a form provided by the boiler division **of the department**, of the name and address of the new business affiliate under which the licensee intends to use his or her license. A fee of \$20.00 shall accompany the notification form.

R 408.4127 Boiler repairers; classes of licenses.

Rule 127. (1) A class I license allows a licensee to repair a boiler by means other than welding, riveting, or other fabrication process.

(2) A class II license allows a licensee to repair a low-pressure boiler, a hot water supply boiler, and a fire tube boiler of any pressure and to perform work covered by a class I license.

(3) A class III license allows a licensee to repair a water tube boiler designed for a maximum allowable working pressure of not more than 700 psi and a boiler covered by a class II license.

(4) A class IV license allows a licensee to repair or field-erect a boiler of any pressure, except for a boiler that has a nuclear heat source. A licensee who field-erects boilers shall be in the employ of a company in possession of the appropriate ASME code symbol stamps for the type of boiler being erected.

(5) A class V license allows a licensee to erect and repair a boiler that has a nuclear heat source or its parts, appurtenances, or system components. Before a license is issued, an applicant for a class V license shall give evidence of familiarity with and knowledge of all federal rules and regulations regarding the construction of a boiler that has a nuclear heat source and shall be employed by a company in possession of a valid ASME N-type symbol stamp applicable to the portions of any nuclear boiler system he or she proposes to repair.

(6) A class P license qualifies a person to install or repair non-boiler external piping as defined by ASME code B31.1.

(7) A licensed boiler repairer shall secure a permit for a change in use of an existing boiler or replacement by mechanical methods, without welding, of sections in sectional boilers, heat exchangers, feed water heater or economizer, and tube bundles in accordance with R 408.4033.

R 408.4133 Reports of inspection to be filed.

Rule 133. (1) Each company employing licensed boiler inspectors, within 30 days following each boiler certificate inspection made by the inspectors, shall file a report of the inspection with the chief inspector upon appropriate forms provided by the boiler division. Reports of external inspections shall not be required except when such inspections disclose that the boiler is in dangerous condition. Manufacturers or national board numbers shall be reported on all reports of inspection.

(2) The inspector shall leave a signed and dated inspection sticker or inspection report at the inspection location.

(3) The inspector shall record his or her national board of boiler and pressure vessel commission number on the inspection report.

R 408.4139 Rental boilers.

Rule 139. A rental boiler shall be inspected before it is rented and the boiler shall be approved for ~~reinstallation~~ **temporary installation**. An inspection certificate for an approved rental boiler is valid for 12

months. ~~A reinstallation~~**A licensed boiler installer shall secure an installation permit is required in accordance with R 408.4033 for the piping each time a rental boiler is reinstalled. The permit application for an installed rental boiler shall be posted at the rental boiler.**

R 408.4163 Notification in case of accident that renders boiler inoperative.

Rule 163. (1) If an accident occurs that renders a boiler inoperative, then the owner or user shall immediately notify the chief inspector. For a serious accident, notice shall be given immediately by the quickest method available, and neither the boiler nor any of its parts shall be removed or disturbed before an inspection has been made by the chief inspector, deputy inspector, or special inspector, unless the removal is to save human life. A condition or failure which results in bodily injury or physical damage to equipment or property other than the boiler or which creates a unique or unusual explosion hazard shall be reported as a serious accident.

(2) A detailed accident report shall be submitted by the owner's or user's insurance company boiler inspector on an accident report form furnished by the boiler division **of the department.** ~~of consumer and industry services~~ If a boiler is not insured, a state deputy boiler inspector shall submit the required report.

R 408.4177 Reinstallation of used or secondhand boilers; fees.

Rule 177. Reinstallation of a used or secondhand boiler shall only be performed by a licensed boiler installer. A permit fee prescribed by R 408.4038 shall be paid directly to the **boiler division of the department of consumer and industry services** and shall accompany the permit to reinstall a used or secondhand boiler.

R 408.4182 Steam cookers or kettles.

~~Rule 182. (1) These rules do not apply to a steam cooker which has a volume of less than 5 cubic feet and which does not have piped feed connections.~~

(21) A fired or electrically heated steam ~~cooker~~ **kettle**, irrespective of size, that has piped feed connections shall be in compliance with these rules.

(32) A fired or electrically heated kettle, irrespective of size or feed piping connections, shall be in compliance with the requirements of these rules. The owner or user shall report the installation to the chief inspector before the unit is operated. The chief inspector shall assign a deputy inspector to visit the installation location to inspect the kettle to determine its safety for operation. A kettle that is operated at or below 15 psi shall be inspected biennially. A kettle that is operated at more than 15 psi shall be inspected annually.

R 408.4197 Clearance between boilers and other objects.

Rule 197. (1) **A licensee performing an installation shall assure that** ~~A~~ a minimum clearance of 24 inches ~~shall be~~ is provided between a boiler, its controls, firing equipment, and appurtenances and the building walls and partitions or other boilers or machinery. **The licensee shall assure that clearances are in accordance with the manufacturer's instructions where required clearances are greater than the minimum required by this rule. The boiler owner shall assure that the clearances are maintained for the life of the boiler and shall not be infringed upon by items in storage.**

(2) A licensee may request a deviation from the requirements of this rule by submitting drawings to the chief inspector for review and approval before installation of the boiler. The licensee ~~will~~ **shall** be notified by the chief inspector of the approval or denial of the request.

R 408.4302 Boiler installation.

Rule 302. (1) A boiler shall be installed by a licensed boiler installer in accordance with the requirements of the applicable ASME code referenced in R 408.4031 and as may be required by these rules.

(2) A boiler installer shall file welding procedure specifications and the procedure qualification reports qualified in accordance with the requirements of the ASME code, section IX, welding and brazing qualifications, with the boiler division ~~of the department of consumer and industry services~~, before performing any installations requiring welding.

(3) A boiler installer utilizing welding during installation shall have welding procedure specifications, welder performance qualifications, and a quality control manual or procedures to be used or which were used in the conduct of the installation available for the inspector's review.

R 408.4303 **Rescinded.** ~~Float or electrode chamber drain connections; float control mechanisms.~~

~~Rule 303. (1) Float or electrode chambers shall be equipped with suitable drain connections that are not less than 3/4 inch pipe size. The drain shall be piped at full size to a safe point of discharge.~~

~~(2) An outlet connection, except for damper regulators, pressure controls, water columns, drains, or steam gauges, shall not be placed on the float chamber or on the pipes connecting the float chamber to the boiler on which it is mounted.~~

~~(3) Float operated water control or cutoff devices shall be equipped with fixed stops that are designed to prevent the overtravel of control floats and rods which would unduly stress the control mechanism during operation of the mechanism or, alternatively, the control mechanism shall be designed for overtravel without unduly stressing the control mechanism during operation of the mechanism.~~

R 408.4304 **Rescinded.** ~~Low water cut off controls.~~

~~Rule 304. (1) An automatically fired boiler, except for a hot water supply boiler, shall be equipped with an automatic low water fuel cut off.~~

~~(a) For high pressure boilers, the low water fuel cut off shall be located to automatically cut off the fuel supply when the surface of the water falls to the lowest visible part of the water gauge glass.~~

~~(b) For low pressure boilers, the low water cut off shall be installed in accordance with ASME code section IV.~~

~~(2) A low water cut off device shall be of the float or probe type or paddle type nonreversing flow switch as allowed by this rule.~~

~~(3) A paddle type nonreversing flow switch may be used in place of a float or probe type low water cut off on an individually automatically fired coil type instantaneous hot water heating boiler that has intermittent pump operation.~~

PART 5. INSERVICE INSPECTION OF BOILERS

R 408.4503 Owner or user to prepare boiler for inspection.

Rule 503. ~~(1) All boilers and blowoff vessels, except for a boiler which is exempted by these rules and which is subject to regular inspections as provided for in R 408.4057, shall be prepared for inspection in accordance with the NBIC and hydrostatic tests these rules by the owner or user when notified by the chief inspector, deputy inspector, or special inspector. The owner or user shall ensure that all examinations and tests required by the inspector are performed.~~

~~(2) The owner or user shall prepare each boiler for internal inspection and shall prepare for and apply the hydrostatic test, when necessary, on the date specified. The owner or user shall ensure that all examinations and tests required by the inspector are performed.~~

R 408.4507 Special hydrostatic test.

Rule 507. (1) At the interval specified by this rule, the owner shall ensure that a special hydrostatic test is performed. The owner shall ensure that the test pressure is not less than 80% of the maximum allowable working pressure and is not more than 1 ½ times the maximum allowable working pressure. The test pressure shall be acceptable to the inspector. The owner shall ensure that the water temperature used to apply the hydrostatic test is not less than 70 degrees Fahrenheit and that the maximum metal temperature is not more than 120 degrees Fahrenheit. Hold time for the examination by the inspector shall be the time necessary for the inspector to conduct the examination, but not less than 10 minutes. ~~At the discretion of the inspector~~ **may require** the owner ~~shall to~~ expose all longitudinal seams, girth seams, boiler supports, and attachments for inspection. **All of the following are required for testing:**

(a) The owner shall ensure that a test of a riveted boiler is performed at 30 years and every 4 years thereafter. An inspector ~~shall decide whether it is necessary to~~ **may require** removal of rivets to ascertain their condition.

(b) The owner shall ensure that a test of a lap seam boiler which is less than 36 inches in diameter and which operates at 100 ~~PSI~~ **psig** or less is performed at 20 years and every 4 years thereafter. A lap seam boiler which is more than 36 inches in diameter or which operates at more than 100 ~~PSI~~ **psig** ~~is not permitted to~~ **shall not** operate in this state.

(c) The owner shall ensure that a test is performed on a welded boiler at 30 years and every 8 years thereafter **for boilers on a 1 or 2-year inspection frequency and every 9 years for boilers on a 3-year inspection frequency.**

(d) The owner shall ensure that a ~~leak~~ test is performed on a ~~cast iron~~ **mechanically assembled** boiler at 30 years and every ~~4-8~~ years thereafter. The hydrostatic pressure shall not exceed the safety/safety relief valve setting. **The inspector may require an internal inspection.** ~~is at the discretion of the inspector.~~

(e) The owner may request a waiver of the special hydrostatic test required under this rule to the chief inspector if the boiler stated in the request has been granted an extension of the internal inspection frequency under R 408.4058. If a waiver is granted, the review committee established under R 408.4058 shall evaluate the condition of the boiler during each review to determine if a hydrostatic test is necessary.

(2) ~~At the discretion of the inspector~~ **may require** a nondestructive examination ~~may be utilized for~~ seams or weldments that are inaccessible.

R 408.4510 Traction boilers.

Rule 510. (1) A traction boiler is a boiler designed for the express purpose of pulling farm equipment or to convert steam power into flywheel energy driving farm apparatus, such as thrashers, saws, or grinding equipment. Such boilers shall be subject to the following provisions:

(a) They shall be ~~annually~~ tested hydrostatically **every 3 years** to a hydrostatic pressure of 1 ½ times working pressure, held for sufficient time to permit visual observation of all seams, joints, supports, and attachments.

(b) All seams, attachments, supports, and joints ~~will~~ **shall** be exposed for each such annual inspection.

(2) Traction boilers used for display or hobby purposes shall not be operated for any other purpose but that for which they were originally constructed.

(3) Lap seam boilers shall not be operated in excess of 100 psi.

(4) Any repairs by welding or riveting to traction boilers shall be made by licensed repair shops only after **an** approved permit has been obtained and subject to the approval of the inspector before and after repair is made. ~~The licensed repair shop shall furnish the department the record of welded repair signed by the authorized inspector who approved the repair.~~

R 408.4511 Nonvaporizing organic fluid boilers.

Rule 511. (1) A nonvaporizing organic fluid boiler is a boiler designed to heat, but not vaporize, a fluid in a closed system.

(2) The owner shall ensure that a nonvaporizing organic fluid boiler is constructed in accordance with the ASME boiler and pressure vessel code.

(3) The owner shall ensure that stop valves are located at an accessible point in the supply and return pipe connections as near the boiler as is practicable.

(4) The owner shall ensure that a nonvaporizing organic fluid boiler has the following minimum equipment:

(a) One operating temperature control and 1 high limit temperature control.

(b) A relief valve of sufficient capacity to relieve the excess thermal fluid as a result of thermal expansion verified by engineering calculations provided by the owner or user.

(c) A thermometer ~~calibrated~~**graduated** to not less than 133% of the expected operating temperature.

(d) A pressure gauge ~~calibrated~~**graduated** to not less than 150% of the expected operating pressure.

(e) A low level or flow sensing device suitable for operating conditions.

(5) The owner shall ensure that a fuel train meets the requirements of ASME code CSD-1.

R 408.4512 Miniature hobby locomotive boilers.

Rule 512. (1) A miniature hobby locomotive boiler is designed to be operated on a narrow gauge track of less than 24 inches.

(2) At the initial inspection of a miniature hobby locomotive boiler, the owner shall provide the chief boiler inspector with design specifications and calculations for review and acceptance. If a boiler is approved for use, then the boiler division of the department of consumer and industry services shall issue an identifying state number and a deputy boiler inspector shall attach it to the boiler.

(3) The owner shall ensure that a miniature hobby locomotive boiler has the following minimum equipment:

(a) A pressure gauge ~~calibrated~~**graduated** to approximately 1 ½ times the operating pressure, but not more than 4 times the operating pressure.

(b) A means to extinguish the fire in the firebox~~in the event of~~ if of a low water condition.

(c) Two means of feeding water to the boiler, 1 of which shall be operable while the locomotive is stationary.

(d) A water level gauge glass located so that the top of the bottom nut of the gauge glass ~~will be~~**is** approximately 10% of the distance between the crown sheet and the shell, but not less than ½ inch above the crown sheet.

(e) Two safety valves set at not more than 10% above the operating pressure for boilers fabricated after the effective date of the rules. The capacity of the safety valves shall be equal to or greater than the calculated steam generating capacity of the boiler.

(4) The owner shall determine the maximum allowable working pressure of a miniature hobby locomotive boiler by calculation. In place of acceptable calculations, the owner shall subject the boiler to a hydrostatic pressure test of 1 ½ times the owner specified operating pressure.

(5) Triennially, during the certificate inspection, the owner shall hydrostatically test the boiler to not more than 1 ½ times the operating pressure.

(6) The boiler division **of the department** shall develop procedures, policies, and check lists necessary to accomplish the inspections and tests required by these rules.

(7) Repairs to miniature hobby locomotive boilers are exempt from the licensing and permitting requirements of the act. Repair welding shall be made in accordance with the requirements of ASME code section IX. Welding procedures and performance qualification shall be filed with the boiler division **of the department** for review.

R 408.4518 **Rescinded.**~~Inspection of low water cutoffs.~~

~~—Rule 518. The owner shall ensure that an inspection of the low water cutoff is performed at least once during the certificate period, preferably at the time of the certificate inspection.~~

~~—(a) The owner shall ensure that the low water fuel cutoffs (float models) are disassembled and cleaned to allow an inspection of the float and float chamber.~~

~~—(b) The owner shall ensure the removal of the low water fuel cutoff (probe and flow switch models) from the boiler or its associated piping for inspection. An acceptable alternative allows the owner to ensure a test performed for operability by lowering the water level or stopping flow to actuate the low water cutoff and secure the boiler.~~

R 408.4566 Inspection and testing of safety valves and safety relief valves.

Rule 566. (1) ~~Safety valves and safety relief valves are the most important attachments on a boiler.~~

~~—(2) The inspector shall ensure that there is no accumulation of rust, scale, or other foreign substance in the valve body that will interfere with the free operation of the valve. If tested under operating conditions, the boiler pressure shall be allowed to raise slowly to the popping pressure and subsequently fall to check the popping pressure and blowdown. If this is not practical, the owner shall ensure that a test of the valve for free operation is performed using the lifting lever if the boiler pressure is 75% or more of the set pressure. Following resetting, the owner shall ensure that the valve is resealed and shall ensure that the identifying mark of the organization responsible for resetting the valve is included. The inspector shall check the nameplate of the safety valve or safety relief valve to verify that the set pressure is correct and the capacity is adequate. The inspector shall check that the set pressure and blowdown adjustments are properly sealed. Where there is a discharge pipe, the inspector shall check the discharge pipe supports for adequacy and determine, at the time the valve is operated, whether the drain opening in the discharge pipe is free.~~
Inspection and testing of safety valves and safety relief valves shall be conducted in accordance with the NBIC. The manual lift test addressed in the NBIC at RB-8400 may be used instead of the pressure test required by RB-8410.

PART 6. REPAIR OF BOILERS SCOPE OF RULES FOR REPAIR BY RIVETING

R 408.4601 ~~Approval of repair~~**Repair to riveted boilers.**

Rule 601. (1) ~~Repairs to riveted boilers by riveting require the prior approval of the boiler division of the department of consumer and industry services, boiler division~~ **The repairs shall be conducted in accordance with the NBIC.**

~~(2) For the repair of riveted boilers by welding, see R 408.4626 to R 408.4689.~~

R 408.4602 **Rescinded.**~~Stress carried by shell plate and patch seams.~~

~~—Rule 602. The first thing to determine when proceeding with the design of a patch is whether or not all the end stress is to be carried by the patch; that is, whether the heads are supported or unsupported. In drums of watertube boilers, the full endwise stress is carried by the shell plates and the patch seams; whereas in shells of horizontal tubular boilers some of the endwise stress is carried by the through rods, tubes, or flues and, consequently, there is less stress on the shell and patch seams. It is evident then that a patch in one case need not have the same width for a given length as in another case. In other words, different constants may be used in determining the width. Tables 3 and 4 take into account these 2 different conditions.~~

R 408.4603 **Rescinded.**~~Relation of angle of patch to diameter of boiler.~~

~~Rule 603. The angle of the patch when laid out in the flat does not change when formed to the curvature of the boiler; therefore, the diameter of the boiler does not need to be taken into consideration in the design when the provisions of R 408.4604 are met.~~

R 408.4604 Rescinded.~~Forming and thickness of patches.~~

~~—Rule 604. A patch shall be laid out in the flat and then carefully formed to accurately fit the contour of the boiler where it is to be applied. A patch plate shall be of the same thickness as the original thickness of the plate it replaces.~~

R 408.4605 Rescinded.~~Construction of seams.~~

~~—Rule 605. Seams exposed to the products of combustion shall be single riveted lap construction. Seams not exposed to the products of combustion shall be double riveted or constructed similar to the original seams of the boiler.~~

R 408.4606 Rescinded.~~Size and shape of patches.~~

~~—Rule 606. A patch that is more than 24 inches in length shall have the proper width as determined by these rules. A patch that is 24 inches or less in length shall be triangular, crescent, diamond, or oval in form and the width, W, shall be at least twice the length, L.~~

R 408.4607 Rescinded.~~Shortening width of patches extending high.~~

~~—Rule 607. If a patch would extend high, it may be shortened in width to the extent that not more than 4 rivets will be in a longitudinal line, as shown in figure 4. Likewise, to avoid the necessity of caulking in sharp corners, a patch may be shortened in width to the extent that not more than 4 rivets will be in a longitudinal line, as shown in figure 4.~~

R 408.4608 Rescinded.~~Patches 60 inches or more in length.~~

~~—Rule 608. If a patch would have to be 60 inches or more in length, consideration shall be given to the use of a sheet that has a width equivalent to 5/8 of the circumference of the boiler, and the longitudinal seam shall be of a design similar to the design of the original seam of the boiler.~~

R 408.4609 Rescinded.~~Patches more than 24 inches long.~~

~~—Rule 609. In laying out patches more than 24 inches long, they shall be triangular or diamond as required for the particular job, shall have definite straight line sides, and shall have rounded out corners to permit proper caulking, as illustrated in figures 3, 4, 5, and 6. The length, L, and the width, W, are also shown in figures 3, 4, 5, and 6.~~

R 408.4610 Rescinded.~~Rivets, patch bolts, or staybolts in riveted stayed surfaces.~~

~~—Rule 610. Rivets, patch bolts, or staybolts may be used in riveted seam surfaces that are stayed or braced if at least 1 rivet or patch bolt is used between adjacent staybolts. The riveting shall be completed first. Rivet holes may be countersunk in patches on shells that have braced heads, if desired, without materially affecting the calculated strength of the patch. The angle of the chamfer with the center line of the rivet hold shall not be more than 45 degrees, and the depth shall not be more than half the thickness of the plate.~~

R 408.4611 Rescinded.~~Determining effective diagonal efficiency.~~

~~—Rule 611. Where patches have already been applied, the problem is to determine the effective diagonal efficiency. If the seams are all rounded, that is, the patch is crescent or oval in shape, the length, L, shall be~~

~~taken between the center of the extreme 2 rivets on the longitudinal center line and the width, W, between the center of the extreme 2 rivets on the girthwise center line, as shown in figures 7 and 8.~~

R 408.4612 Rescinded.~~Material.~~

~~—Rule 612. Patch material shall be pressure vessel quality steel depending upon the plate it replaces. All material shall be in compliance with the specifications of section II, ASME boiler and pressure vessel code. The repair shop shall be required to produce a copy of the manufacturer's mill test report of the material to be used.~~

R 408.4613 Rescinded.~~Material to contain heat number.~~

~~—Rule 613. The material used for repairs shall contain the manufacturer's heat number. If only part of the plate is required and the part does not contain the heat number, the heat number shall be transferred to the patch plate before the plate is cut.~~

R 408.4614 Rescinded.~~Workmanship.~~

~~—Rule 614. All patch plates shall be placed inside a boiler shell or drum where exposed to the products of combustion and where deposits would be pocketed. Where the patch plate included the part to which the blowoff is attached, the patch shall be placed on the outside of the boiler.~~

R 408.4615 Rescinded.~~Defective material exposed to products of combustion.~~

~~—Rule 615. All defective material exposed to the products of combustion shall be removed and properly trimmed to provide for neat workmanship in attaching the patch. Defects not exposed to the products of combustion need not be removed unless necessary to ensure a workmanlike job.~~

R 408.4616 Rescinded.~~Setting back distorted sheets.~~

~~—Rule 616. A distorted sheet that is to be patched shall first be set back straight as much as possible before proceeding with the cutting out of the plate so that the patch may be kept as small as possible.~~

R 408.4617 Rescinded.~~Manner of beveling edges and driving rivets.~~

~~—Rule 617. The edge of a patch shall be beveled by planing, chipping, or gas cutting before applying it to the boiler. Rivets shall be driven by gun, if possible.~~

R 408.4618 Rescinded.~~Size of rivet holes.~~

~~—Rule 618. A drilled rivet hold shall be full size. A rivet hole may be punched if the size of the hole is not more than 1/4 of an inch smaller than full size for plates that are more than 5/16 of an inch thick and not more than 1/8 inch smaller for plates that are 5/16 of an inch or less in thickness. A punched hole shall then be reamed to full size with the patch in place. A rivet hole is usually 1/16 of an inch greater in diameter than the normal diameter of the rivet, but a 1/32 of an inch difference is preferable when the rivets are of uniform size.~~

R 408.4619 Rescinded.~~Seal welding.~~

~~—Rule 619. If seal welding is used, it shall be laid in a single bead with a throat thickness not less than 3/16 of an inch and not more than 5/16 of an inch. The patch shall be tight before seal welding under a hydrostatic test equal to the operating pressure.~~

R 408.4620 Rescinded.~~Scarfig edges.~~

~~Rule 620. When 3 plates must be lapped at the corners of a patch, the middle plate shall be scarfed to a feather edge the entire width of the lap, as shown in figure 3.~~

R 408.4622 **Rescinded.** ~~Determining length and width of patch and efficiencies.~~

~~Rule 622. (1) The length, L, of a patch shall be determined. The dimension is, or course, governed by the area of the defect.~~

~~(2) The normal efficiency, e, of the single riveted seam that is to be used in the patch shall be determined from table 2. This is governed by the thickness of the plate and diameter of rivet holes.~~

~~(3) To determine the girthwise width of a patch, multiply the length by the constant C, as shown in table 3 or 4, depending upon the type of boiler to be repaired. The tables give a constant C for a given efficiency, e, of patch and efficiency, E, of the longitudinal seam (See R 408.4623).~~

~~(4) To determine the longitudinal efficiency of an existing patch, L and W, the patch, p, and diameter of the rivet, d, shall be measured. W divided by L will give the constant C. Table 2 will give e. Under e in table 3 or 4, depending upon the type of boiler to be repaired, find the constant C. Then whatever is E in the first column is the longitudinal or allowed efficiency of the patch seam (See R 408.4624).~~

EXAMPLES

R 408.4623 **Rescinded.** ~~Design of patch for horizontal tubular boiler.~~

~~Rule 623. A patch shall be placed in the fire sheet of a horizontal return tubular boiler that has a shell plate 7/16 of an inch thick, a longitudinal seam efficiency of 74%, and a length of patch of 36 inches. Find the width, W, of the patch to be applied so there will not be any reduction in pressure using a single riveted seam of normal design. Referring to table 2, a 7/16 inch plate that has 5/16 inch diameter rivet holes and a pitch of 2 1/4 inches gives a seam efficiency of 56%. Referring to table 3, E=0.74 and e=0.56 give a constant C=1.75. Then width $W=L \times C=36 \times 1.75=63$ inches.~~

R 408.4624 **Rescinded.** ~~Pressure allowance on existing patch.~~

~~Rule 624. A crescent shaped patch has already been installed on a horizontal tubular boiler. It is 30 inches long and 48 inches wide. The seam is noted to be single riveted and has 13/16 of an inch rivet holds that are pitched 1 15/16 of an inch. The boiler shell plate is 3/8 inch thick. The longitudinal seam is of the double riveted, butt strap type that has an efficiency of 82%. The safety valve is set for 125 pounds of pressure. What maximum pressure should be allowed on the boiler? Referring to table 2, the normal efficiency of the patch seam is 57%. If the efficiency is not found in the table, refer to any other available table or determine it in the customary manner described in paragraphs A-1 and A-2 of the appendix of the ASME power boiler code. Divide the width of the patch, W=48 inches, by the length, L=30 inches, to find the constant $C=48/30=1.60$. Follow down column 0.57 of table 3 until 1.60 is found. This is somewhat between 1.56 and 1.62 representing E somewhere between 0.72 and 0.73. As the difference between 1.56 and 1.62 is 6, and the difference between 1.56 and 1.60 is 4, E will be 0.72 plus 4/6 of 0.01, which is 0.7266. The pressure approved varies directly with the seam efficiency. Accordingly, $P=0.7266/0.82 \times 125=110$ pounds. If this allowance interferes with the operation of the plant, the patch will have to be replaced by a new one with proper dimensions that give a diagonal efficiency of 82%.~~

R 408.4625 **Rescinded.** ~~Design of patch for watertube boiler.~~

~~Rule 625. Sections of the plate that have a total length of 36 inches, measured at the pitch line, are to be removed on each side of the girth seam. The patch is to be diamond or oval in shape. The shell plate is 7/16 of an inch thick and the longitudinal seam is double riveted, butt strap construction that has an efficiency of 82%. What should be the width of the patch for maintaining the same pressure allowance?~~

Table 2 shows that a single riveted lap seam that has a 7/16 inch plate, 15/16 inch diameter rivet holes, and 2 1/4 inch pitch has a normal efficiency of 56%. Table 4 shows for $E=0.82$ and $e=0.56$, the constant C is 3.16. Then width $W = C \times L/2$ $W = 3.16 \times 36/2 = 56.88$, rounded up to 57 inches.

R 408.4626 ~~Applicability of rules to~~ **Repairs by welding.**

Rule 626. These rules apply when repairs are to be made to boilers by welding. If a repair outside the scope of these rules is deemed feasible by the inspector, then the repair may be undertaken only with prior approval from the boiler division, department of consumer and industry services. The repairer shall ensure that the repairs make a boiler as safe as the original construction. **Repairs to boilers and piping shall be conducted in accordance with the NBIC.**

R 408.4627 **Rescinded.** ~~Routine repairs.~~

~~Rule 627. (1) A repair of a routine nature is a repair that restores the original design configuration and materials of a boiler or its pressure parts. It may involve weld buildup of eroded or corroded pressure boundary surfaces or like for like replacement of tubes or pipes. A licensed repairer, including an organization that has been granted an exemption under section 23 of the act, shall make a routine repair.~~

~~(2) With the approval of the inspector, the licensed boiler repairer may be given prior authorization to perform welded repairs of a routine nature. The following are examples of routine repairs:~~

~~(a) Weld repair, seal welding or the replacement of pipes, tubes and attachments. The replacement of tubes shall not exceed 10% of the total tubes in the boiler.~~

~~(b) The addition of nonpressure attachments to pressure parts where post weld heat treatment is not required.~~

~~(c) The restoration of a pressure boundary by welding where post weld heat treatment is not required.~~

~~(d) The welding of gauge holes where reinforcement is not a consideration.~~

~~(e) A change in the arrangement of tubes in furnace walls, economizers, or superheater sections.~~

~~(f) The addition or replacement of handholes or nozzles where reinforcement is not a consideration.~~

~~(g) The removal and reinstallation of welded handholes on boiler headers or pressure parts.~~

~~(3) A routine repair may be completed on a boiler without subsequently conducting a hydrostatic test if prior approval is obtained from the inspector.~~

~~(4) The inspector may require any additional examination or test necessary to satisfy himself or herself that the repair is safe.~~

R 408.4628 **Rescinded.** ~~Welding of cast iron boilers prohibited.~~

~~Rule 628. The welding of cast iron boilers at any time or for any purpose is prohibited. Replacement of a cast iron section shall be conducted in accordance with the rules for the reinstallation of boilers.~~

R 408.4631 **Rescinded.** ~~Welding procedures.~~

~~Rule 631. (1) A boiler repairer shall file welding procedure specifications and the procedure qualifications reports qualified in accordance with the requirements of ASME code section IX, welding and brazing qualifications, with the boiler division, department of consumer and industry services, before conducting any repairs requiring welding.~~

~~(2) A boiler repairer who makes welded repairs shall have available, for the inspector's review, welding procedure specifications and welder performance qualifications records to be used or that were used in the conduct of the repair.~~

R 408.4637 **Rescinded.** ~~Reports of welded repairs.~~

~~Rule 637. A boiler repairer who makes welded repairs shall furnish the boiler division, department of consumer and industry services, with 2 copies of a report of a welded repair. The report shall be established by the boiler division and shall be signed by the repairer and the inspector certifying that the reported repair was made in accordance with these rules. The boiler repairer shall also furnish the boiler owner or user with a copy of the report of the welded repair, upon request.~~

R 408.4660 **Rescinded.**Cracks in unstayed shells, drums, or headers.

~~Rule 660. Cracks in unstayed shells, drums, or headers of boilers may be repaired by welding. If the boiler is of riveted construction, the cracks may not extend between rivet holes in a longitudinal seam or parallel to a longitudinal riveted seam within 8 inches measured from the nearest caulked edge. Repairs to multiple or star cracked areas are prohibited. If embrittlement is suspected as the cause of the cracking, repair by welding is prohibited and the affected areas shall be replaced or the boiler condemned.~~

R 408.4667 **Rescinded.**Cracks between tube holes.

~~Rule 667. In repairing cracks between tube holes, welding shall be applied from both sides of the plate, if possible. The tubes to which the cracks extend shall be removed and the cracks chipped, ground, or gouged to provide the required welding groove. Tube holes shall be reamed before new tubes are installed.~~

R 408.4689 **Rescinded.**Lapped and fillet welded patches prohibited.

~~Rule 689. Lapped and fillet welded patches are prohibited.~~

**TABLE 2
EFFICIENCIES OF SINGLE-RIVETED SEAMS**

Plate thickness, <i>t</i>	Rivet hole Pitch of diameter, <i>d</i>	Efficiency of rivets, <i>p</i>	seam, <i>e</i>
1/4	1 1/16	1 7/8	63.3
9/32	3/4	1 7/8	60.0
5/16	3/4	1 7/8	60.0
11/32	13/16	1 15/16	58.0
3/8	13/16	1 15/16	57.0
13/32	7/8	2 1/16	57.5
7/16	15/16	2 1/4	56.0
15/32	15/16	2 1/8	55.5
1/2	1	2 1/4	55.7
9/16	1 1/16	2 3/8	53.0
19/32	1 1/16	2 1/4	52.8
5/8	1 1/16	2 1/4	50.5
21/32	1 1/8	2 5/16	51.4
11/16	1 1/8	2 5/16	51.4

Tensile strength assumed at 55,000 psi and shearing strength at 44,000 psi.

**TABLE 3
TABLE OF CONSTANTS FOR USE IN COMPUTING PATCH SEAMS WHEN HEADS ARE SUPPORTED**

“e” efficiency of patch seams

	0.50	0.51	0.52	0.53	0.54	0.55	0.56	0.57	0.58	0.59	0.60	0.61	0.62	0.63	0.64
0.65	1.68	1.60	1.51	1.43	1.36	1.28	1.20	1.13	...	...	...	...	...	...	...
0.66	1.75	1.67	1.58	1.50	1.42	1.35	1.27	1.19	...	...	...	...	...	...	...
0.67	1.82	1.73	1.65	1.57	1.49	1.41	1.33	1.26	1.18	...	...	...	...	...	...
0.68	1.88	1.79	1.70	1.63	1.55	1.47	1.40	1.32	1.24	1.16	...	...	...	...	...
0.69	1.94	1.86	1.77	1.69	1.61	1.53	1.45	1.38	1.30	1.23	1.15	...	...	...	...
0.70	2.01	1.91	1.83	1.75	1.67	1.59	1.52	1.44	1.36	1.30	1.22	1.15	...	...	...

0.71	2.06	1.97	1.89	1.81	1.73	1.65	1.57	1.50	1.43	1.35	1.28	1.21	1.15	...	...
0.72	2.12	2.03	1.95	1.86	1.79	1.71	1.63	1.56	1.48	1.41	1.34	1.27	1.20	1.14	...
0.73	2.17	2.09	2.00	1.93	1.85	1.77	1.69	1.62	1.54	1.47	1.40	1.33	1.26	1.19	1.11
0.74	2.22	2.14	2.06	1.98	1.91	1.83	1.75	1.67	1.60	1.52	1.45	1.39	1.32	1.25	1.18
0.75	2.28	2.20	2.12	2.04	1.96	1.88	1.81	1.73	1.66	1.58	1.51	1.44	1.37	1.31	1.24
0.76	2.34	2.25	2.17	2.09	2.02	1.93	1.86	1.79	1.71	1.64	1.57	1.50	1.43	1.36	1.30
0.77	2.39	2.31	2.22	2.15	2.07	2.00	1.92	1.84	1.76	1.69	1.62	1.55	1.48	1.42	1.36
0.78	2.44	2.36	2.28	2.20	2.13	2.05	1.97	1.89	1.82	1.75	1.67	1.61	1.54	1.47	1.41
0.79	2.50	2.42	2.33	2.25	2.18	2.10	2.03	1.95	1.87	1.81	1.73	1.66	1.59	1.52	1.46
0.80	2.55	2.46	2.39	2.30	2.23	2.15	2.08	2.00	1.93	1.86	1.79	1.72	1.64	1.58	1.49
0.81	2.60	2.51	2.43	2.36	2.28	2.20	2.13	2.05	1.98	1.91	1.84	1.77	1.69	1.63	1.55
0.82	2.65	2.56	2.48	2.40	2.33	2.25	2.18	2.11	2.03	1.97	1.89	1.82	1.75	1.68	1.61
0.83	2.70	2.62	2.53	2.45	2.38	2.30	2.22	2.15	2.08	2.01	1.94	1.87	1.80	1.73	1.67
0.84	2.75	2.66	2.59	2.51	2.43	2.35	2.27	2.20	2.13	2.06	1.99	1.92	1.85	1.78	1.71
0.85	2.80	2.71	2.63	2.56	2.48	2.40	2.32	2.25	2.18	2.11	2.04	1.97	1.90	1.84	1.77
0.86	2.85	2.77	2.68	2.60	2.52	2.45	2.37	2.30	2.23	2.16	2.09	2.02	1.95	1.89	1.81
0.87	2.90	2.82	2.74	2.65	2.57	2.49	2.42	2.34	2.28	2.21	2.14	2.07	2.00	1.93	1.87
0.88	2.96	2.87	2.78	2.71	2.62	2.54	2.47	2.40	2.32	2.25	2.19	2.12	2.05	1.98	1.91
0.89	3.01	2.92	2.83	2.75	2.68	2.59	2.52	2.44	2.37	2.30	2.23	2.16	2.10	2.03	1.96
0.90	...	2.97	2.89	2.80	2.71	2.65	2.57	2.50	2.42	2.34	2.27	2.21	2.14	2.08	2.01
0.91	...	...	2.94	2.86	2.77	2.69	2.62	2.54	2.47	2.39	2.32	2.25	2.19	2.12	2.06
0.92	...	...	2.90	2.82	2.74	2.66	2.59	2.51	2.44	2.36	2.30	2.23	2.17	2.10	2.04
0.93	...	...	...	2.95	2.87	2.78	2.70	2.63	2.56	2.48	2.42	2.34	2.28	2.21	2.14
0.94	...	...	...	...	2.91	2.83	2.75	2.67	2.60	2.53	2.46	2.39	2.32	2.25	2.18
0.95	...	...	...	...	...	2.87	2.79	2.72	2.64	2.57	2.50	2.43	2.36	2.29	2.22

Constant C	Triangle or crescent shape patches	$C = W \div L$	$W = C \times L$	$L = W \div C$
	Diamond or oval shape patches	$C = 2W \div L$	$W = C \times L \div 2$	$L = 2W \div C$

TABLE 4
TABLE OF CONSTANTS FOR USE IN COMPUTING PATCH SEAMS WHEN HEADS ARE UNSUPPORTED

“e” efficiency of patch seams

	0.50		0.51		0.52	0.53		0.54
0.65	2.20	2.06	1.93	1.80	1.69	1.56	1.45	1.35
0.66	2.30	2.16	2.03	1.90	1.78	1.66	1.55	1.45
0.67	2.40	2.26	2.13	2.00	1.88	1.75	1.64	1.52
0.68	2.50	2.36	2.23	2.10	1.98	1.86	1.73	1.63
0.69	2.62	2.46	2.33	2.20	2.07	1.95	1.84	1.71
0.70	2.75	2.57	2.43	2.30	2.16	2.04	1.93	1.80
0.71	2.87	2.70	2.53	2.40	2.26	2.14	2.02	1.90
0.72	3.00	2.81	2.65	2.48	2.36	2.23	2.11	1.99
0.73	3.14	2.93	2.76	2.60	2.46	2.33	2.20	2.09
0.74	3.28	3.07	2.87	2.71	2.56	2.42	2.30	2.19
0.75	3.28	3.19	3.00	2.83	2.66	2.52	2.40	2.27
0.76	3.52	3.32	3.14	2.96	2.78	2.62	2.49	2.36
0.77	...	3.46	3.28	3.07	2.90	2.74	2.58	2.45
0.78	...	...	3.40	3.19	3.03	2.85	2.69	2.55
0.79	...	...	...	3.32	3.16	2.97	2.80	2.65
0.80	...	...	...	3.46	3.28	3.10	2.92	2.75
0.81	...	...	...	...	3.40	3.20	3.03	2.87
0.82	...	...	...	...	...	3.34	3.16	2.97
0.83	...	...	...	...	...	3.46	3.29	3.10
0.84	...	...	...	...	...	...	3.39	3.22
0.85	...	...	...	...	...	...	...	3.32
0.86	...	...	...	...	...	...	...	3.45
0.87	...	...	...	...	...	...	...	3.40
0.88	...	...	...	...	...	...	...	...
0.89	...	...	...	...	...	...	...	...
0.90	...	...	...	...	...	...	...	...
0.91	...	...	...	...	...	...	...	...

0.92	...	...	...	...	...	...	...	...	...	...	3.45	3.29	3.14	2.97
0.93	...	...	...	...	...	...	...	...	...	...	...	3.39	3.24	3.09
0.94	...	...	...	...	...	...	...	...	...	...	...	...	3.32	3.19
0.95	...	...	...	...	...	...	...	...	...	...	...	...	3.43	3.28
<hr/>														
Constant C	Triangle or crescent shape patches				$C = W \div L$		$W = C \times L$		$L = W \div C$					
	Diamond or oval shape patches				$C = 2W \div L$		$W = C \times L \div 2$		$L = 2W \div C$					

PART 7. BOILER BLOWOFF SYSTEMS

R 408.4701 Design and construction of ~~blowoff tanks, separators, and flash tanks;~~ reports.

Rule 701. (1) The owner shall ensure that ~~blowoff tanks, separators, and flash tanks~~ **blowdown vessels** for use in the state of Michigan are designed and constructed as prescribed by these rules and the ASME boiler and pressure vessel code, section VIII, division 1, entitled "Unfired Pressure Vessels," 1998 ~~2004~~ **2004** edition, and its **2005** addenda ~~which are Section VIII and addenda are adopted by reference in these rules and may be reviewed at the Okemos office of~~ **are available for inspection at the Michigan Department of consumer and industry services Labor & Economic Growth, 6546 Mercantile Way, Lansing, Michigan 48911 or** A copy of Section VIII of the ASME code and addenda may be purchased at a cost as of the time of adoption of these rules of \$385.00 from the ASME International, 22 Law Drive, Fairfield, New Jersey 07007, ~~at a cost as of the time of adoption of these amendatory rules of \$495.00.~~ **or from the Michigan Department of Consumer and Industry Services, 2501 Woodlake Circle, Okemos, Michigan 48864. National board of boiler and pressure vessel inspector document NB-27, 2004 edition, may be used as a guide for the design of blowdown tanks.**

(2) The owner shall ensure that a ~~blowoff tank~~ **blowdown vessel** has a ~~maximum~~ **minimum** allowable working pressure of 50 psig ~~minimum, with both heads preferably concave to pressure, and is constructed in accordance with the design illustrated in figure 23 and all of the following requirements;~~ **and that the installation complies with these rules and the vessel manufacturer's instructions.**

(a) The ~~blowoff tank~~ **blowdown vessel**, its fittings, and connections shall be sized ~~in accordance with the provisions of table 5 in R 408.4750. Blowoff separators shall be sized by selecting a separator that has a blowoff inlet connection equal to or greater than the size of the largest blowoff connection on any 1 boiler so that the internal pressure does not rise more than 5 psig above ambient pressure during the blowdown.~~

(b) The ~~blowoff tank, separator, or flash tank~~ **blowdown vessel** shall be provided with adequate openings to facilitate internal cleaning and inspection. **An internal inspection of the blowdown vessel shall be conducted during the certificate inspection of the boiler.**

(c) The ~~blowoff tank and separator~~ **blowdown vessel** shall be provided with ~~all of the following fittings and connection openings in addition to those provided by the manufacturer for the proper installation and operation of the vessel:~~

- ~~(i) A blowoff inlet connection.~~
- ~~(ii) A water outlet connection.~~
- ~~(iii) A vent connection.~~
- ~~(iv) A drain connection. A drain connection is not required on a separator.~~
- ~~(v) A cold water supply line.~~
- ~~(vi) A thermometer connection that has a maximum scale reading of 300 degrees Fahrenheit and that is located in the water outlet from the blowdown vessel.~~
- ~~(vii) A pressure gauge connection that is graduated from 0 to 30 psig and that is attached to the top of the steam space of the blowdown vessel.~~

(d) The ~~blowoff tank, separator, or flash tank~~**blowdown vessel** shall be installed in a location that prevents it and its connected piping from freezing and shall be installed in a manner that permits both internal and external inspection.

(23) A manufacturer shall provide the boiler division ~~of the department of consumer and industry services~~, with the manufacturer's data reports. A data report that is signed by an authorized inspector, together with the ASME code symbol stamp on the vessel, is the record denoting that the ~~blowoff tank, separator, or flash tank~~**blowdown vessel** has been constructed in accordance with the ASME code.

(34) The manufacturer shall ~~stamp~~**register** all ~~blowoff tanks, separators, and flash tanks~~**blowdown vessels** for use in the state of Michigan with the words "National Board" and with the national board of boiler and pressure vessel inspector. ~~serial number for the vessel. Stamping with the words "National Board" signifies inspection by an authorized inspector.~~

R 408.4704 **Rescinded.**~~Blowoff tanks and separators; when required.~~

~~Rule 704. A blowoff tank or blowoff separator shall be required in the blowdown system of any steam boiler and any process boiler as defined in these rules, except for a boiler exempted by the provisions of R 408.4707 or except when the blowoff discharge is led to a safe point as defined in R 408.4711. Blowoff separators may be used in conjunction with boilers designed for a maximum allowable pressure of 300 psig in place of boiler blowoff tanks as required in these rules.~~

R 408.4707 **Rescinded.**~~Blowoff tanks and separators; when not required.~~

~~Rule 707. A blowoff tank or blowoff separator is not required in the blowoff system of locomotive cranes, power shovels, floating equipment, or stationary steam boilers used solely for heating purposes at a pressure of 15 psig or less or any other steam boiler having not more than 10 square feet of water heating surface designed for a pressure of 100 psig or less. The water from the blowdown system of such exempt boilers shall be directed to a safe point of discharge as defined in R 408.4711.~~

R 408.4711 Safe discharge ~~of water from blowoff~~**blowdown** system.

Rule 711. A safe point of discharge from a ~~blowoff~~**blowdown** system shall ~~be one that will protect personnel and property from the injurious effects of the discharge~~ **and shall not exceed 140 degrees Fahrenheit at the outlet of the blowdown vessel**. All safe points of discharge shall be in compliance with all federal, state, and local regulations governing discharges.

R 408.4727 **Rescinded.**~~Blowoff tank and separator inlet and wearing plate.~~

~~Rule 727. The inlet to the blowoff tank or separator shall be located between the water level in the tank and the top of the tank. The blowdown shall enter tangentially and a wearing plate shall be attached to the shell of the tank and shall be located symmetrically at about the point that the water strikes the shell of the tank. The wearing plate shall provide protection against vessel erosion and shall extend approximately 1/3 of the tank circumference beyond the point of admission.~~

R 408.4731 **Rescinded.**~~Blowoff tank and separator vent.~~

~~Rule 731. The vent or steam escape line from the blowoff tank or separator shall be attached to an opening placed at the highest possible location above the steam space. The vent or steam escape line shall be as direct as possible to the outside atmosphere without intervening stop valves and shall discharge at a point of safety not less than 7 feet above or distant from adjoining buildings, areaways, walkways, or fire escapes.~~

R 408.4735 **Rescinded.**~~Blowoff tank water outlet line and aftercooler.~~

~~Rule 735. The water outlet line, if connected to discharge into a building sewer, shall contain an aftercooler to reduce the temperature of the water to at least 140 degrees Fahrenheit, if the admission of cooling water into the blowoff tank does not reduce the temperature of the discharged water to that temperature. The water outlet connection shall be connected to the blowoff tank so that the tank will remain half full of water after each boiler blowdown. The outlet connection shall have a water seal incorporated into its design. The vertical leg of the water seal shall extend to within 6 inches of the bottom of the tank.~~

R 408.4739 **Rescinded.**Water discharge temperature not to exceed 140 degrees Fahrenheit.

~~Rule 739. (1) When adequate cooling water is available at the blowoff tank or blowoff separator, it shall be connected in a manner that maintains the temperature of the discharge water at or below 140 degrees Fahrenheit when the blowoff valves are fully opened.~~

~~(2) The water discharge through drains or blowdowns on boilers shall not enter a building sewer at a temperature of more than 140 degrees Fahrenheit.~~

R 408.4743 **Rescinded.**Discharge pressure from blowoff equipment.

~~Rule 743. The pressure of the blowdown leaving any type of blowoff equipment shall not exceed 5 psig.~~

R 408.4747 **Rescinded.**Appliances.

~~Rule 747. Each blowoff tank or separator installation shall be provided with both of the following appliances:~~

~~(a) A pressure gauge which is graduated from 0 to 30 psi and which is attached to the top of the steam space of the blowoff tank or separator.~~

~~(b) A thermometer which has a maximum scale reading of 300 degrees Fahrenheit and which is located in the water outlet from the tank.~~

R 408.4750 **Rescinded.**Determining size of blowoff tank.

~~Rule 750. Table 5 is based on using 100 feet of equivalent blowoff pipe and on the highest pressure in the particular category. If longer pipe or lower pressure than given in the category is used, then the actual flow in pounds per hour may be determined from table 6 and chart A for the actual conditions and for the maximum conditions in the category and the area of the tank reduced proportionately to this flow.~~

**TABLE 5
STEAM-BOILER RULES AND REGULATIONS**

A		B	C	D	
			Cold		
Boiler		Steam	Water	Water	Blowoff
Design	Blowoff	Vent	Inlet	Outlet	Tank
Pressure	Size	Size	Size	Size	Size
(P.S.I.G.)	(Inches)	(Inches)	(Inches)	(Inches)	(Dia. x Hgt.)
	3/4	2	3/4	1 1/2	14 x 5'6"
	1	2	1	1 1/2	14 x 5'6"
20	1 1/4	2	1 1/4	2 1/2	14 x 5'6"
to	1 1/2	2 1/2	1 1/4	2 1/2	14 x 5'6"
50	2	3	2	4	18 x 6'0"
	2 1/2	4	2	4	20 x 6'0"
	3/4	2	1	1 1/2	14 x 5'6"
	1	2 1/2	1 1/4	2	14 x 5'6"
51	1 1/4	3	1 1/2	3	18 x 6'0"

to	1 1/2	4	2	4	18 x 6'0"
100	2	5	2 1/2	4	24 x 6'0"
	2 1/2	6	2 1/2	5	30 x 6'6"
	3/4	2 1/2	1	2	14 x 5'6"
	1	3	1 1/4	3	14 x 5'6"
101	1 1/4	4	1 1/2	3	20 x 6'0"
to	1 1/2	5	2	4	24 x 6'0"
150	2	6	2 1/2	4	33 x 6'6"
	2 1/2	8	3	5	39 x 6'6"
	3/4	3	1	2	14 x 5'6"
	1	4	1 1/4	2 1/2	18 x 6'0"
151	1 1/4	5	2	3	24 x 6'0"
to	1 1/2	6	2	4	30 x 6'0"
200	2	8	2 1/2	4	39 x 6'6"
	2 1/2	8	3	5	48 x 6'6"
	3/4	4	1 1/4	2	18 x 6'0"
	1	5	1 1/2	2 1/2	24 x 6'0"
201	1 1/4	6	2	4	30 x 6'6"
to	1 1/2	6	2 1/2	4	36 x 6'6"
300	2	8	3	5	48 x 6'6"
	2 1/2	10	3	6	54 x 7'0"
	3/4	4	1 1/4	2 1/2	20 x 6'0"
	1	5	1 1/2	3	24 x 6'0"
301	1 1/4	6	2	4	33 x 6'6"
to	1 1/2	8	2 1/2	4	42 x 6'6"
400	2	10	3	5	54 x 7'0"
	2 1/2	10	4	6	66 x 7'0"
	3/4	4	1 1/4	2 1/2	20 x 6'0"
	1	5	1 1/2	3	27 x 6'6"
401	1 1/4	8	2	4	39 x 6'6"
to	1 1/2	8	2 1/2	4	48 x 6'6"
500	2	10	3	5	60 x 7'0"
	2 1/2	12	4	8	72 x 7'0"
	3/4	5	1 1/4	2 1/2	24 x 6'0"
	1	6	1 1/2	3	30 x 6'6"
501	1 1/4	8	2 1/2	4	42 x 6'6"
to	1 1/2	10	2 1/2	5	54 x 7'0"
600	2	12	3	6	66 x 7'0"

TABLE 5 (Cont.)

	A	B	C	D	
Boiler Design Pressure (P.S.I.G.)	Blowoff Size (Inches)	Steam Vent Size (Inches)	Cold Water Inlet Size (Inches)	Water Outlet Size (Inches)	Blowoff Tank Size (Dia. x Hgt.)
	2 1/2	12	4	8	72 x 7'0"
	3/4	5	1 1/4	2 1/2	27 x 6'6"
	1	6	1 1/2	3	36 x 6'6"
601	1 1/4	8	2	4	48 x 6'6"
to	1 1/2	10	2 1/2	5	60 x 7'0"
800	2	12	3	6	72 x 7'0"
	2 1/2	12	4	8	72 x 7'0"
	3/4	6	1 1/4	2 1/2	30 x 6'6"
	1	8	1 1/2	3	42 x 6'6"
801	1 1/4	10	2 1/2	4	54 x 7'0"
to	1 1/2	10	3	5	66 x 7'0"
1000	2	12	4	6	72 x 7'0"
	3/4	8	1 1/4	2 1/2	36 x 6'6"

1001	1	8	2	4	48 x 6'6"
to	1 1/4	10	2 1/2	4	66 x 7'0"
1500	1 1/2	12	3	5	72 x 7'0"
	3/4	8	1 1/4	2 1/2	42 x 6'6"
1501	1	10	1 1/2	4	48 x 6'6"
to	1 1/4	10	2 1/2	5	66 x 7'0"
2000	1 1/2	12	3	5	72 x 7'0"
	3/4	8	1 1/4	4	48 x 6'6"
2001	1	10	2	4	66 x 7'0"
to	1 1/4	12	2 1/2	5	72 x 7'0"
2500	1 1/2	12	3	6	72 x 7'0"

•Size of blowoff connection on boiler or size of blowoff header, whichever is larger.

••The sizes tabulated are based on the minimum diameter and minimum volume that can be used. Larger diameter tanks with equivalent or larger volume may be used.

TABLE 6
EQUIVALENT RESISTANCES OF VALVES AND FITTINGS

Valve or Fitting	Nominal Diameter of Pipe, Inches					
	3/4	1	1 1/4	1 1/2	2	2 1/4
Equivalent Length Straight Pipe, Feet						
Globe valve	22	27	37	44	55	65
Angle valve	12	15	18	21	28	32
Swing check valve, open	5	7	9	11	14	15
Gate valve, open	0.5	0.6	0.8	0.9	1.2	1.4
Gate valve, 1/2 closed	2.5	3.5	4.5	5.2	7	8
Gate valve, 1/4 closed	14	16	22	25	35	40
Gate valve, 3/4 closed	55	70	90	110	140	160
Tee	4.5	5.5	7.5	9	12	14
Elbow, standard	2.0	2.6	3.5	4.5	5.3	6.3
Elbow, medium sweep	1.7	2.2	3	3.5	4.5	5.3
Elbow, long sweep	1.4	1.7	2.4	2.8	3.5	4.2
Elbow, square	4.5	5.5	7.5	9	12	14
45E elbow	1.0	1.3	1.6	2	2.5	3

Notes: Values for closed (180E) return bends, approximately between values for square elbow and check valve.

Values for entrance into pipe (as from tank) approximately between 45E ell and long sweep elbow.

Values for run through a tee, same as long sweep elbow.

Values for run outside outlet of tee, same as for tee.

R 408.4801 Rescinded.Boiler burners and controls.

–Rule 801. Boiler burners and controls shall be tested in accordance with R 408.4027.

R 408.4851 Rescinded.Applicability of rules.

–Rule 851. (1) The following rules are intended to apply to all types of automatic electric low water fuel cutoffs and electrically controlled feedwater regulating devices used on boilers, as required by these rules.

–(2) Where controls such as electrodes, probes, or other types are mounted directly into the boiler shell, the paragraphs in the rules relating to floats, float bowls, and piping shall not apply, but the operating level specified shall apply to controls of all types.

R 408.4853 Rescinded.Marking of maximum allowable working pressure.

~~Rule 853. All automatic electric low-water fuel cutoff devices and electrically operated feedwater-regulating devices shall be plainly marked to indicate the maximum allowable working pressure.~~

R 408.4856 **Rescinded.** ~~Installation of feedwater-regulating devices.~~

~~Rule 856. The water feed valve, if operated from a float or electrode chamber, shall be sufficiently isolated or insulated from the boiler temperatures as to minimize the deposit of sludge or scale. All feedwater-regulating devices shall be connected to a boiler in such a manner that the feedwater will flow to the boiler through a separate connection and will not flow directly through the float chamber or through the water column or water gauge glass connections.~~

R 408.4893 **Rescinded.** ~~Over-travel of control mechanisms.~~

~~Rule 893. Float-operated water control or cutoff devices shall be equipped with fixed stops so designed as to prevent over-travel of control floats and rods which would unduly stress the control mechanisms, or the control mechanism shall be designed to permit such over-travel after operation of the mechanism.~~

NOTICE OF PUBLIC HEARING

SOAHR 2005-016
DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF CONSTRUCTION CODES AND FIRE SAFETY
NOTICE OF PUBLIC HEARING

Michigan Boiler Rules (SOAHR# 2005-016 LG)

The Department of Labor & Economic Growth, Bureau of Construction Codes and Fire Safety, will hold a public hearing on March 28, 2006, at 1:30 p.m., 2501 Woodlake Circle, Okemos, MI 48864, in conference room 3, 1st floor. The proposed effective date of the rule set is October 1, 2006.

The public hearing is to receive public comments on the proposed amendments to the administrative rules. The proposed rules will update the Michigan Boiler Rules to adopt the 2004 editions of the ASME code and the National Board Inspection Code. The rule update will allow Michigan to enforce the most current standards to assure that boilers are manufactured, installed, and inspected to the safest standards. The hearing is being conducted by authority conferred on the director of the Department of Labor & Economic Growth by sections 4 and 4a of 1965 PA 290, Executive Reorganization Order Nos. 1996-2 and 2003-1, MCL 408.754, 445.2001 and 445.2011.

The proposed rules will be published in the March 15, 2006, edition of the *Michigan Register*. Copies of the proposed amendments to the Michigan Boiler Rules may be obtained for a fee of \$3.00 by submitting a check or money order, made payable to the State of Michigan, to the Bureau at the address below. You may download a free copy of the proposed amendments by visiting our website at www.michigan.gov/bccfs. The amendments are located under the What's New section.

Oral or written comments may be presented in person at the hearing on March 28, 2006, or submitted in writing by mail, e-mail, or facsimile no later than 5:00 p.m., March 28, 2006. If your presentation is in written form, please provide a copy to the court reporter at the conclusion of your testimony.

Department of Labor & Economic Growth
Bureau of Construction Codes and Fire Safety
Office of Administrative Services
P.O. Box 30254
Lansing, MI 48909
Telephone (517) 335-2972
Facsimile (517) 241-9570
smmatsu@michigan.gov

Be sure all cellular telephones and pagers are turned off or set to vibrate during the hearing.

The meeting site is accessible, including handicapped parking. People with disabilities requiring additional accommodations in order to participate in the meeting should call Tracie Pack at 517-335-2972 (voice) or 517-322-5987 (TTY) at least 14 workdays prior to the hearing.

PROPOSED ADMINISTRATIVE RULES

SOAHR 2005-092

DEPARTMENT OF LABOR AND ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE SERVICES

ACTUARIAL OPINION UNDER STANDARD VALUATION LAW
AND MEMORANDUM

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the commissioner of the Office of Financial and Insurance Services by sections 210 and 830a of 1956 PA 218 as amended, 1969 PA 306, as amended, and E.R.O. No. 2003-1, MCL 500.210, MCL 500.830a, MCL 24.231 to MCL 24.233; and MCL 445.2011)

Draft February 13, 2006

R 500.881, R 500.882, R 500.883, R 500.884, R 500.885, R 500.886, R 500.887, R 500.888, R 500.889 are rescinded, and R 500.991, R 500.992, R 500.993, R 500.994, R 500.995 and R 500.996 together with included Exhibits 8, 9, 10, and 11 are added to the Michigan Administrative Code as follows:

R 500.881 Definitions: Rescinded.

Rule 1. As used in these rules:

- ~~–(a) "Actuarial opinion" means either of the following:~~
 - ~~–(i) With respect to R 500.887, R 500.888, or R 500.889, the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy test in accordance with R 500.887 and with presently accepted actuarial standards.~~
 - ~~–(ii) With respect to R 500.886, the opinion of an appointed actuary regarding the calculation of reserves and related items in accordance with R 500.886 and with the presently accepted actuarial standards that specifically relate to the opinion.~~
- ~~–(b) "Actuarial standards board" means the board established by the American academy of actuaries to develop and promulgate standards of actuarial practice.~~
- ~~–(c) "Annual statement" means the statement required by section 438 of Act No. 218 of the Public Acts of 1956, as amended, being S500.438 of the Michigan Compiled Laws, to be filed annually by the company with the commissioner.~~
- ~~–(d) "Appointed actuary" means any individual who is appointed or retained in accordance with the requirements set forth in R 500.884(3) to provide the actuarial opinion and supporting memorandum as required by section 830a of the standard valuation law.~~

~~–(e) "Asset adequacy analysis" means an analysis that meets the standards and other requirements referred to in R 500.884(4). The analysis may take many forms, including cash flow testing, sensitivity testing, or applications of risk theory.~~

~~–(f) "Company" means a life insurance company, fraternal benefit society, or reinsurer that is subject to the provisions of these rules.~~

~~–(g) "Non-investment grade bonds" means bonds designated as class 3, 4, 5, or 6 by the national association of insurance commissioners securities valuation office.~~

~~–(h) "Qualified actuary" means any individual who meets the requirements set forth in R 500.884(2).~~

~~–(i) "Standard valuation law" means sections 830 to 837 of Act No. 218 of the Public Acts of 1956, as amended, being SS500.830a to 500.837 of the Michigan Compiled Laws.~~

R 500.882 Purpose. Rescinded.

~~Rule 2. The purpose of these rules is to prescribe all of the following: (a) Standards for statements of actuarial opinion that are to be submitted in accordance with section 830a of the standard valuation law and for memoranda in support of the statements.~~

~~–(b) Standards for statements of actuarial opinion that are to be submitted when a company is exempt from section 830a of the standard valuation law.~~

~~–(c) Rules applicable to the appointment of an appointed actuary.~~

R 500.883 Applicability. Rescinded.

~~–Rule 3. (1) These rules apply to all life insurance companies and fraternal benefit societies doing business in this state and to all life insurance companies and fraternal benefit societies that are authorized to reinsure life insurance, annuities, or accident and health insurance business in this state.~~

~~–(2) These rules apply to all annual statements filed with the commissioner after the effective date of these rules. Except with respect to companies that are exempted pursuant to R 500.885, a statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with R 500.887, and a memorandum in support of that statement in accordance with R 500.888, is required each year. An exempt company shall file a statement of actuarial opinion pursuant to R 500.886.~~

~~–(3) Notwithstanding the provisions of subrules (1) and (2) of this rule, the commissioner may require any company that is exempt pursuant to R 500.885 to submit a statement of actuarial opinion and to prepare a memorandum in support of the statement in accordance with R 500.887 and R 500.888 if, in the opinion of the commissioner, an asset adequacy analysis is necessary with respect to the company.~~

R 500.884 Statement of actuarial opinion submission requirements; "qualified actuary" and "appointed actuary" defined; asset adequacy analysis; liabilities. Rescinded.

~~Rule 4. (1) All of the following provisions apply to the submission of a statement of actuarial opinion:~~

~~–(a) For each year beginning with the year in which these rules become effective, a statement shall be included on or attached to page 1 of the annual statement which is by an appointed actuary, which is entitled "Statement of Actuarial Opinion," and which sets forth an opinion relating to reserves and related actuarial items held in support of policies and contracts in accordance with R 500.887. However, a company that is exempt pursuant to R 500.885 from submitting a statement of actuarial opinion in accordance with R 500.887 shall include, on or attached to page 1 of the annual statement, a statement of actuarial opinion rendered by an appointed actuary in accordance with R 500.886.~~

~~–(b) If in the previous year a company provided a statement of actuarial opinion in accordance with R 500.886 and in the current year does not meet the exemption criteria of R 500.885(3)(a), (b), or (c) to again provide an actuarial opinion in accordance with R 500.886, then the statement of actuarial opinion under~~

~~R 500.887 is not required until August 1 following the date of the annual statement. In this instance, the company shall provide, with its annual statement, a statement of actuarial opinion in accordance with R 500.886 and appropriate qualification noting the company's intent to subsequently provide a statement of actuarial opinion in accordance with R 500.887. (c) If an actuarial opinion is required to be submitted by a foreign or alien company, the commissioner may accept the statement of actuarial opinion filed by the company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.~~

~~(d) Upon written request by the company, the commissioner may grant an extension of the date for submission of the statement of actuarial opinion.~~

~~(2) As used in these rules, a "qualified actuary" means an individual who meets all of the following criteria:~~

~~(a) Is a member in good standing of the American academy of actuaries or the society of actuaries.~~

~~(b) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American academy of actuaries qualification standards for actuaries signing this type of statement.~~

~~(c) Is familiar with the valuation requirements applicable to life and health insurance companies.~~

~~(d) Has not been found by the commissioner, after appropriate notice and hearing, to have done any of the following or, if found by the commissioner to have done any of the following, has been reinstated as a qualified actuary:~~

~~(i) Violated any provision of, or any obligation imposed by, the insurance laws or other laws of this state in the course of his or her dealings as a qualified actuary.~~

~~(ii) Been found guilty of fraudulent or dishonest practices.~~

~~(iii) Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary.~~

~~(iv) During the past 5 years, submitted to the commissioner, pursuant to these rules, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of these rules, including standards set by the actuarial standards board.~~

~~(v) Resigned or been removed as an actuary within the past 5 years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards.~~

~~(e) Has notified the commissioner of any findings by any commissioner of any other state similar to the findings under subdivision (d) of this subrule.~~

~~(3) As used in these rules, an "appointed actuary" means a qualified actuary who is appointed or retained, either directly by, or through the authority of, the board of directors through an executive officer of the company, to prepare the statement of actuarial opinion required by these rules. The company shall give the commissioner timely written notice of the name, title, and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary; and the company shall state in the notice that the person meets the requirements set forth in subrule (2) of this rule. If the person appointed or retained is a consulting actuary, the notice shall also include the name of the person's firm. Once notice is furnished, further notice is not required with respect to an appointed actuary if the company gives the commissioner timely written notice when the actuary ceases to be appointed or retained as an appointed actuary or ceases to meet the requirements set forth in subrule (2) of this rule. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the company shall state this in the notice and give the reasons for replacement.~~

~~(4) The asset adequacy analysis required by this rule shall be in compliance with both of the following:~~

~~–(a) The standards of practice as promulgated from time to time by the actuarial standards board and any additional standards under this rule. The standards shall form the basis of the statement of actuarial opinion in accordance with R 500.887.~~

~~–(b) The methods of analysis that are deemed appropriate for the asset adequacy analysis by the actuarial standards board.~~

~~–(5) Liabilities shall be treated as follows:~~

~~–(a) Under authority of section 830a of the standard valuation law, the statement of actuarial opinion shall apply to all in-force business on the annual statement date regardless of when or where issued, such as reserves of exhibits 8, 9, and 10, claim liabilities in exhibit 11, part I, and equivalent items in the separate account statement or statements.~~

~~–(b) If the appointed actuary determines, as the result of asset adequacy analysis, that a reserve must be held in addition to the aggregate reserve held by the company and calculated in accordance with the methods set forth in section 834(2), (3), (6), and (7) of the standard valuation law, the company shall establish the additional reserve.~~

~~–(c) For years ending before December 31, 1996, the company may, in place of establishing the full amount of the additional reserve in the annual statement for that year, set up an additional reserve in not less than the following amounts for the following years:~~

~~–(i) December 31, 1994; the additional reserve divided by 3.~~

~~–(ii) December 31, 1995; 2 times the additional reserve divided by 3.~~

~~–(d) Additional reserves established under subdivisions (b) and (c) of this subrule and considered not necessary in subsequent years may be released. Any amounts released shall be disclosed in the actuarial opinion for the applicable year. The release of the reserves shall not be considered an adoption of a lower standard of valuation.~~

~~R 500.885 Determination of type of opinion to be submitted; classification of companies; tests for determination of eligibility for exemption from statement submission; submission requirement for category D company. **Rescinded.**~~

~~Rule 5. (1) In accordance with section 830a of the standard valuation law, every company doing business in this state shall annually submit the opinion of an appointed actuary as provided for by these rules. The type of opinion submitted shall be determined by the provisions set forth in this rule and shall be in accordance with the applicable provisions of R 500.886 to R 500.889.~~

~~–(2) A company shall be classified as follows based on its assets as of the end of the calendar year for which the actuarial opinion is applicable:~~

~~–(a) A category A company is a company that does not have assets of more than \$20,000,000.00.~~

~~–(b) A category B company is a company that has assets of more than \$20,000,000.00, but not more than \$100,000,000.00.~~

~~–(c) A category C company is a company that has assets of more than \$100,000,000.00, but not more than \$500,000,000.00.~~

~~–(d) A category D company is a company that has assets of more than \$500,000,000.00.~~

~~–(3) The following tests shall be used to determine eligibility for exemption from submission of a statement of actuarial opinion in accordance with R 500.887:~~

~~–(a) A category A company that, for any year beginning with the year in which these rules become effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with R 500.887 for the year in which the criteria are met:~~

~~–(i) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .10.~~

~~(ii) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .30.~~

~~–(iii) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than .50.~~

~~–(iv) The examiner team for the national association of insurance commissioners has not designated the company as a first priority company in any of the 2 calendar years preceding the calendar year for which the actuarial opinion is applicable, or as a second priority company in each of the 2 calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and the commissioner has notified the national association of insurance commissioners of his or her satisfaction. The ratios in paragraphs (i), (ii), and (iii) of this subdivision shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.~~

~~–(b) A category B company that, for any year beginning with the year in which these rules become effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with R 500.887 for the year in which the criteria are met:~~

~~–(i) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .07.~~

~~–(ii) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .40.~~

~~–(iii) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than .50.~~

~~–(iv) The examiner team for the national association of insurance commissioners has not designated the company as a first priority company in any of the 2 calendar years preceding the calendar year for which the actuarial opinion is applicable, or as a second priority company in each of the 2 calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and the commissioner has notified the national association of insurance commissioners of his or her satisfaction.~~

~~The ratios in paragraphs (i), (ii), and (iii) of this subdivision shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.~~

~~–(c) A category A or category B company that meets all of the criteria set forth in subdivision (a) or (b) of this subrule, whichever is applicable, is exempted from submission of a statement of actuarial opinion in accordance with R 500.887, unless the commissioner specifically indicates to the company that the exemption is not to be taken.~~

~~–(d) A category A or category B company that, for any year beginning with the year in which these rules become effective, is not exempted under subdivision (c) of this subrule shall submit a statement of actuarial opinion in accordance with R 500.887 for the year for which it is not exempt.~~

~~–(e) A category C company that, after submitting an opinion in accordance with R 500.887, meets all of the following criteria shall not be required, unless required in accordance with subdivision (f) of this subrule, to submit a statement of actuarial opinion in accordance with R 500.887 more frequently than every third year. A category C company that fails to meet all of the following criteria for any year shall submit a statement of actuarial opinion in accordance with R 500.887 for that year:~~

~~–(i) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .05.~~

~~–(ii) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .50.~~

~~–(iii) The ratio of the book value of the non-investment grade bonds to the sum of the capital and surplus is less than .50.~~

~~–(iv) The examiner team of the national association of insurance commissioners has not designated the company as a first priority company in any of the 2 calendar years preceding the calendar year for which the actuarial opinion is applicable, or as a second priority company in each of the 2 calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and the commissioner has notified the national association of insurance commissioners of his or her satisfaction. The ratios in paragraphs (i), (ii), and (iii) of this subdivision shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.~~

~~–(f) A company that is not required by this rule to submit a statement of actuarial opinion in accordance with R 500.887 for any year shall submit a statement of actuarial opinion in accordance with R 500.886 for that year;~~

~~unless, as provided for in R 500.883(2), the commissioner requires a statement of actuarial opinion in accordance with R 500.887.~~

~~–(4) Every category D company shall submit a statement of actuarial opinion in accordance with R 500.887 for each year beginning with the year in which these rules become effective.~~

~~R 500.886 Statement of actuarial opinion not including an asset adequacy analysis. **Rescinded.**~~

~~Rule 6. (1) A statement of actuarial opinion which is required by these rules but which does not include an asset adequacy analysis shall consist of all of the following elements:~~

~~–(a) A paragraph identifying the appointed actuary and his or her qualifications.~~

~~–(b) A regulatory authority paragraph stating that the company is exempt pursuant to R 500.885 from submitting a statement of actuarial opinion based on an asset adequacy analysis and that the opinion, which is not based on an asset adequacy analysis, is rendered in accordance with this rule.~~

~~–(c) A scope paragraph identifying the subjects on which the opinion is to be expressed and describing the scope of the appointed actuary's work.~~

~~–(d) An opinion paragraph expressing the appointed actuary's opinion as required by section 830a of the standard valuation law.~~

~~–(2) In general, the following language shall be included in a statement of actuarial opinion in accordance with this rule. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary shall use language that clearly expresses his or her professional judgment. However, the opinion shall retain all pertinent aspects of the following language:~~

~~–(a) The opening paragraph shall indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion shall read as follows:~~

~~"I, [name of actuary], am [title] of [name of company] and a member of the [American academy of actuaries or society of actuaries]. I was appointed by, or by the authority of, the board of directors of said insurer to render this opinion as stated in the letter to the commissioner dated [date]. I meet the academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health companies."~~

~~–For a consulting actuary, the opening paragraph of the actuarial opinion shall contain a sentence such as:~~

~~—"I, [name and title of actuary], a member of the [American academy of actuaries or society of actuaries], am associated with the firm of [insert name of consulting firm]. I have been appointed by, or by the authority of, the board of directors of [name of company] to render this opinion as stated in the letter to the commissioner dated [date]. I meet the academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."~~

~~–(b) The regulatory authority paragraph shall include a statement such as the following:~~

~~—Said company is exempt pursuant to regulation [insert designation] of the [name of state] insurance department from submitting a statement of actuarial opinion based on an asset adequacy analysis. This opinion, which is not based on an asset adequacy analysis, is rendered in accordance with R 500.886."~~

~~—(e) The scope paragraph shall contain a sentence such as the following:~~

~~—"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company as prepared for filing with state regulatory officials, as of December 31, []."~~

~~—The paragraph shall list items and amounts with respect to which the appointed actuary is expressing an opinion. The list of items shall include all of the following:~~

~~—(i) Aggregate reserve and deposit funds for policies and contracts included in exhibit 8 of the company's annual statement.~~

~~—(ii) Aggregate reserve and deposit funds for policies and contracts included in exhibit 9 of the company's annual statement.~~

~~—(iii) Deposit funds, premiums, dividend and coupon accumulations, and supplementary contracts that do not involve life contingencies included in exhibit 10 of the company's annual statement.~~

~~—(iv) Policy and contract claims liability end of current year included in exhibit 11, part I, of the company's annual statement.~~

~~—(d) If the appointed actuary has examined the underlying records, the scope paragraph shall also include the following statement:~~

~~—"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic records and such tests of the actuarial calculations as I considered necessary."~~

~~—(e) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force prepared by the company or a third party, the scope paragraph shall include a sentence such as either of the following:~~

~~—(i) "I have relied upon listings and summaries of policies and contracts and other liabilities in force prepared by [name and title of company officer certifying in force records] as certified in the attached statement. (See accompanying affidavit by a company officer.) In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I~~

~~considered necessary."~~

~~—(ii) "I have relied upon [name of accounting firm] for the substantial accuracy of the in force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."~~

~~The statement of the person certifying shall follow the form indicated by subdivision (j) of this subrule.~~

~~—(f) The opinion paragraph shall include the following statement:~~

~~—"In my opinion the amounts carried in the balance sheet on account of the actuarial items identified above:~~

~~—(i) Are computed in accordance with those presently accepted actuarial standards that specifically relate to the opinion required under this section.~~

~~—(ii) Are based on actuarial assumptions that produce reserves at least as great as those called for in any contract provisions as to reserve basis and method, and are in accordance with all other contract provisions.~~

~~—(iii) Meet the requirements of the insurance law and regulations of the state of [company's state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.~~

~~–(iv) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year end with any exceptions as noted below.~~

~~–(v) Include provision for all actuarial reserves and related statement items which ought to be established. The actuarial methods, considerations, and analyses used in forming my opinion conform to the appropriate compliance guidelines as promulgated by the actuarial standards board, which guidelines form the basis of this statement of opinion."~~

~~–(g) The concluding paragraph shall document the eligibility of the company to provide an opinion as provided by this rule. It shall include the following statement:~~

~~"This opinion is provided in accordance with R 500.886 governing actuarial opinions under standard valuation law. As such, it does not include an opinion regarding the adequacy of reserves and related actuarial items when considered in light of the assets which support them.~~

~~–Eligibility under R 500.886 is confirmed as follows:~~

~~–(i) The ratio of the sum of capital and surplus to the sum of cash and invested assets is [insert amount], which equals or exceeds the applicable criterion based on the assets of the company.~~

~~–(ii) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total assets is [insert amount], which is less than the applicable criteria based on the admitted assets of the company.~~

~~–(iii) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is [insert amount], which is less than the applicable criteria of .50.~~

~~–(iv) To my knowledge, the examiner team of the national association of insurance commissioners has not designated the company as a first priority company in any of the 2 calendar years preceding the calendar year for which the actuarial opinion is applicable, or as a second priority company in each of the 2 calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile.~~

~~–(v) To my knowledge there is not a specific request from any commissioner requiring an asset adequacy analysis opinion.~~

~~Signature of Appointed Actuary~~

~~Address of Appointed Actuary~~

~~Telephone Number of Appointed Actuary"~~

~~–(h) If there has been any change in the actuarial assumptions from those previously employed, the change shall be described in the annual statement or in a paragraph of the statement of actuarial opinion, and the reference in subdivision (f)(iv) of this subrule to consistency shall read as follows:~~

~~"...with the exception of the change described on page [] of the annual statement (or in the preceding paragraph)." The adoption for new issues or new claims or other new liabilities of an actuarial assumption that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this paragraph.~~

~~–(i) If the appointed actuary is unable to form an opinion, he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reasons for the opinion. The statement shall follow the scope paragraph and precede the opinion paragraph.~~

~~–(j) If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force, then a statement, similar to the following statements, of a company officer or accounting firm who prepared the underlying data shall be attached to the opinion:~~

~~"I [name of officer], [title] of [name and address of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, [], prepared for and~~

~~submitted to [name of appointed actuary], were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.~~

~~Signature of the Officer of the Company or Accounting Firm~~

~~Address of the Officer of the Company or Accounting Firm~~

~~Telephone Number of the Officer of the Company or Accounting Firm"~~

R 500.887 ~~Statement of actuarial opinion based on an asset adequacy analysis.~~ **Rescinded.**

Rule 7. (1) A statement of actuarial opinion based on an asset adequacy analysis shall consist of all of the following elements:

~~–(a) A paragraph identifying the appointed actuary and his or her qualifications as prescribed by subrule (2)(a) of this rule.~~

~~–(b) A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items that have been analyzed for asset adequacy and the method of analysis, as prescribed by subrule (2)(b) of this rule and identifying reserves and related actuarial items covered by the opinion that have not been analyzed for asset adequacy.~~

~~–(c) A reliance paragraph describing the areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures, or assumptions, such as anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios, as prescribed by subrule (2)(c) of this rule, together with a statement of each expert supporting the data, procedures, or assumptions in the form prescribed by subrule (5) of this rule.~~

~~–(d) An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities as prescribed by subrule (2)(f) of this rule.~~

~~–(e) One or more additional paragraphs, where applicable, as follows:~~

~~–(i) If the appointed actuary considers it necessary to state a qualification of his or her opinion.~~

~~–(ii) If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis.~~

~~–(iii) If the appointed actuary must disclose reliance upon any portion of the assets supporting the asset valuation reserve (AVR), interest maintenance reserve (IMR), or other mandatory or voluntary statement of reserves for asset adequacy analysis.~~

~~–(iv) If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for the current opinion.~~

~~–(v) If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of the current opinion date, and the extent of the release.~~

~~–(vi) If the appointed actuary chooses to add a paragraph briefly describing the assumptions that form the basis for the actuarial opinion.~~

~~–(2) The following paragraphs shall be included in the statement of actuarial opinion in accordance with this rule. In general, the language shall be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary shall use language that clearly expresses his or her professional judgment. However, the opinion shall retain all pertinent aspects of the following language:~~

~~–(a) The opening paragraph shall indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion shall read as follows:~~

~~"I, [name], am [title] of [insurance company name] and a member of the [American academy of actuaries or the society of actuaries]. I was appointed by, or by the authority of, the board of directors of said insurer to render this opinion as stated in the letter to the commissioner dated [date]. I meet the academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."~~

~~For a consulting actuary, the opening paragraph shall contain a sentence such as:~~

~~"I, [name], a member of the [American academy of actuaries or the society of actuaries], am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the board of directors of [name of company] to render this opinion as stated in the letter to the commissioner dated [date]. I meet the academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."~~

~~-(b) The scope paragraph shall include a statement such as the following:~~

~~"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, []. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis."~~

~~**** For Table see attached file labeled "Figures" ****~~

Notes:

~~-(a) The additional actuarial reserves are the reserves established under Rule 500.884(5)(b) or (c).~~

~~-(b) The appointed actuary shall indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in R-500.884(4), by means of symbols that shall be defined in footnotes to the table.~~

~~(c) Allocated amount:~~

~~-(e) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph shall include a statement such as either of the following:~~

~~-(i) "I have relied on [name], [title] for [description, such as, anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios] and, as certified in the attached statement,..."~~

~~-(ii) "I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement." A statement of reliance on other experts shall be accompanied by a statement by each of the experts in the form prescribed by subrule (5) of this rule.~~

~~-(d) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph shall also include the following statement:~~

~~"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary."~~

~~-(e) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force or asset records prepared by the company or a third party, the reliance paragraph shall include a sentence such as either of the following:~~

~~-(i) "I have relied upon listings and summaries [of policies and contracts, of asset records] prepared by [name and title of company officer certifying in force records] as certified in the attached statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the~~

actuarial calculations as I considered necessary."

~~–(ii) "I have relied upon [name of accounting firm] for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary."~~

~~The statement specified by this subdivision shall be accompanied by a statement by each person relied upon in the form prescribed by subrule (5) of this rule.~~

~~–(f) The opinion paragraph shall include the following statement:~~

~~–"In my opinion the reserves and related actuarial values concerning the statement items identified above:~~

~~–(i) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated in accordance with sound actuarial principles.~~

~~–(ii) Are based on actuarial assumptions that produce reserves at least as great as those called for in any contract provision as to reserve basis and method and are in accordance with all other contract provisions.~~

~~–(iii) Meet the requirements of the insurance laws and regulations of the state of [company's state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.~~

~~–(iv) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below).~~

~~–(v) Include provision for all actuarial reserves and related statement items that ought to be established.~~

~~The reserves and related items, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including the investment earnings on the assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.~~

~~The actuarial methods, considerations, and analyses used in forming my opinion conform to the appropriate standards of practice as promulgated by the actuarial standards board, which standards form the basis of this statement of opinion.~~

~~This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion that should be considered in reviewing this opinion.~~

~~_____ or~~

~~The following material change(s) that occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes)~~

~~The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.~~

~~Signature of Appointed Actuary~~

~~Address of Appointed Actuary~~

~~Telephone Number of Appointed Actuary"~~

~~—(3) The adoption for new issues or new claims or other new liabilities of an actuarial assumption that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this rule.~~

~~—(4) If the appointed actuary is unable to form an opinion, then he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reasons for the opinion. The statement shall follow the scope paragraph and precede the opinion paragraph.~~

~~—(5) If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force or asset oriented information, then a statement, similar to the following statement, of a company officer or accounting firm who prepared the underlying data shall be attached to the opinion:~~

~~—"I [name of officer], [title], of [name of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, [], and other liabilities prepared for and submitted to [name of appointed actuary] were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.~~

~~Signature of the Officer of the Company or Accounting Firm~~

~~Address of the Officer of the Company or Accounting Firm~~

~~Telephone Number of the Officer of the Company or Accounting Firm"~~

~~_____ and/or~~

~~—"I, [name of officer], [title] of [name of company, accounting firm, or security analyst], hereby affirm that the listings, summaries and analyses relating to data prepared for and submitted to [name of appointed actuary] in support of the asset-oriented aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.~~

~~Signature of the Officer of the Company, Accounting Firm or the Security Analyst~~

~~Address of the Officer of the Company, Accounting Firm or the Security Analyst~~

~~Telephone Number of the Officer of the Company, Accounting Firm or the Security Analyst"~~

R 500.888 Description of actuarial memorandum including asset adequacy analysis. **Rescinded.**

~~—Rule 8. (1) In accordance with section 830a of the standard valuation law, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves under an opinion pursuant to R 500.887. The memorandum shall be made available for examination by the commissioner upon his or her request, but shall be returned to the company after examination and shall not be considered a record of the insurance commissioner or subject to automatic filing with the commissioner.~~

~~—(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of R 500.884(2) with respect to the areas covered in such memoranda and who state that they are qualified in their memoranda.~~

~~-(3) If the commissioner requests a memorandum and such memorandum does not exist, or if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the actuarial standards board or the standards and requirements of these rules, the commissioner may designate a qualified actuary to review the opinion and prepare a supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company, but shall be directed and controlled by the commissioner.~~

~~-(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the commissioner; however, any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the commissioner. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this rule for either the current year or any of the preceding 3 years.~~

~~-(5) When an actuarial opinion under R 500.887 is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in R 500.884(4) and any additional standards under this rule. The memorandum shall specify all of the following information:~~

~~-(a) For reserves, all of the following information:~~

~~-(i) Product descriptions, including market description, underwriting and other aspects of a risk profile, and the specific risks the appointed actuary considers significant.~~

~~-(ii) Source of liability in force.~~

~~-(iii) Reserve method and basis.~~

~~-(iv) Investment reserves.~~

~~-(v) Reinsurance arrangements.~~

~~-(b) For assets, all of the following information:~~

~~-(i) Portfolio descriptions, including a risk profile disclosing the quality, distribution, and types of assets.~~

~~-(ii) Investment and disinvestment assumptions.~~

~~-(iii) Source of asset data.~~

~~-(iv) Asset valuation bases.~~

~~-(c) Analysis basis, including all of the following information:~~

~~-(i) Methodology.~~

~~-(ii) Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed.~~

~~-(iii) Rationale for degree of rigor in analyzing different blocks of business.~~

~~-(iv) Criteria for determining asset adequacy.~~

~~-(v) Effect of federal income taxes, reinsurance, and other relevant factors.~~

~~-(d) Summary of results.~~

~~-(e) Conclusions.~~

~~-(6) The memorandum shall include the following statement:~~

~~"Actuarial methods, considerations, and analyses used in the preparation of this memorandum conform to the appropriate standards of practice as promulgated by the actuarial standards board, which standards form the basis for this memorandum."~~

R 500.889 Additional considerations for analysis. **Rescinded.**

~~Rule 9. (1) For the asset adequacy analysis for the statement of actuarial opinion provided under R 500.887, reserves and assets may be aggregated by either of the following methods:~~

~~–(a) Aggregate the reserves and related actuarial items, and the supporting assets, for different products or lines of business, before analyzing the adequacy of the combined assets to mature the combined liabilities. The appointed actuary must be satisfied that the assets held in support of the reserves and related actuarial items so aggregated are managed so that the cash flows from the aggregated assets are available to help mature the liabilities from the blocks of business that have been aggregated.~~

~~–(b) Aggregate the results of asset adequacy analysis of 1 or more products or lines of business, the reserves for which prove through analysis to be redundant, with the results of 1 or more products or lines of business, the reserves for which prove through analysis to be deficient. The appointed actuary must be satisfied that the asset adequacy results for the various products or lines of business for which the results are so aggregated are developed using consistent economic scenarios and are subject to mutually independent risks, so that the likelihood of events impacting the adequacy of the assets supporting the redundant reserves is completely unrelated to the likelihood of events impacting the adequacy of the assets supporting the deficient reserves. For any aggregation, the actuary shall disclose in his or her opinion that the reserves were aggregated on the basis of this subdivision or subdivision (a) of this subrule, whichever is applicable, and shall describe the aggregation in the supporting memorandum.~~

~~–(2) The appointed actuary shall analyze only the assets held in support of the reserves that are the subject for specific analysis, referred to in this rule as "specified reserves." A particular asset or portion of a particular asset supporting a group of specified reserves cannot support any other group of specified reserves. An asset may be allocated over several groups of specified reserves. The annual statement value of the assets held in support of the reserves shall not exceed the annual statement value of the specified reserves, except as provided in subrule~~

~~–(3) of this rule. If the method of asset allocation is not consistent from year to year, the extent of its inconsistency shall be described in the supporting memorandum.~~

~~–(3) An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR). The AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of risks regarding asset default and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR shall be disclosed in the table of reserves and liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.~~

~~–(4) For the purpose of performing the asset adequacy analysis required by R 500.887, the qualified actuary is expected to follow standards adopted by the actuarial standards board; nevertheless, the appointed actuary shall, at a minimum, consider in the analysis the effect of all of the following interest rate scenarios:~~

~~–(a) Level with no deviation.~~

~~–(b) Uniformly increasing over 10 years at 1/2 of 1% per year and then level.~~

~~–(c) Uniformly increasing at 1% per year over 5 years and then uniformly decreasing at 1% per year to the original level at the end of 10 years and then level.~~

~~–(d) An immediate increase of 3% and then level.~~

~~–(e) Uniformly decreasing over 10 years at 1/2 of 1% per year and then level.~~

~~–(f) Uniformly decreasing at 1% per year over 5 years and then uniformly increasing at 1% per year to the original level at the end of 10 years and then level.~~

~~–(g) An immediate decrease of 3% and then level.~~

~~For the scenarios specified in subdivisions (a) to (g) of this subrule and other scenarios that may be used, projected interest rates for a 5-year treasury note need not be reduced beyond the point where the 5-year treasury note yield would be at 50% of its initial level. The beginning interest rates may be based on interest rates for new investments as of the valuation date similar to recent investments allocated to support the product being tested or be based on an outside index, such as treasury yields, of assets of the appropriate length on a date close to the valuation date. The method used to determine the beginning yield curve and associated interest rates shall be specifically defined. The beginning yield curve and associated interest rates shall be consistent for all interest rate scenarios.~~

~~–(5) The appointed actuary shall retain on file, for not less than 7 years, sufficient documentation so that it will be possible to determine all of the following:~~

- ~~–(a) The procedures followed.~~
- ~~–(b) The analyses performed.~~
- ~~–(c) The bases for assumptions.~~
- ~~–(d) The results obtained.~~

Figures for: CIS—Insurance Bureau: Actuarial Opinions Under Standard Valuation Law

Asset Adequacy Tested Amounts		Reserves and Liabilities			
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves(a) (2)	Analysis Method(b)	Other Amount (3)	Total Amount (1+2+3) (4)
Exhibit 8					
A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefit					
E Disability Active					
F Disability Disabled					
G Miscellaneous					
Total (Exhibit 8 Item 1, Pg 3)					
Exhibit 9					
A Active Life Reserve					
B Claim Reserve					
Total (Exhibit 9 Item 2, Pg 3)					
Exhibit 10					
1 Premiums and Other Deposit Funds					
1.1 Policyholder Premiums (Page 3, Line 10.1)					
1.2 Guaranteed Interest Contracts (Page 3, Line 10.2)					
1.3 Other Contract Deposit Funds (Page 3, Line 10.3)					
2 Supplementary Contracts Not Involving Life Contingencies (Page 3, Line 3)					

R 500.991 Definitions.

Rule 1. As used in these rules:

- (a) “Actuarial opinion” means the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with R 500.995 and with applicable Actuarial Standards of Practice.
- (b) “Actuarial Standards Board” means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

- (c) “Annual statement” means that statement required by section 438 of 1956 PA 218, as amended, MCL 500.438, to be filed by the company with the Office of Financial and Insurance Services annually.
- (d) “Appointed actuary” means an individual who is appointed or retained under R 500.994(3) to provide the actuarial opinion and supporting memorandum as required by section 830a of 1956 PA 218, MCL 500.830a, of the Standard Valuation Law.
- (e) “Asset adequacy analysis” means an analysis that meets the standards and other requirements referred to in R 500.994(4).
- (f) “Commissioner” means the commissioner of the Office of Financial and Insurance Services.
- (g) “Company” means a life insurance company, fraternal benefit society or reinsurer subject to the provisions of this rule.
- (h) “Qualified actuary” means an individual who meets the requirements in R 500.994(2).

R 500.992 Purpose.

Rule 2. The purpose of these rules is to prescribe the following:

- (a) Requirements for statements of actuarial opinion that are to be submitted in accordance with MCL 500.830a of the Standard Valuation Law, and for memoranda in support thereof.
- (b) Rules applicable to the appointment of an appointed actuary.
- (c) Guidance as to the meaning of “adequacy of reserves.”

R 500.993 Applicability.

Rule 3. (1) These rules shall apply to all life insurance companies and fraternal benefit societies doing business in this state and to all life insurance companies and fraternal benefit societies that are authorized to reinsure life insurance, annuities, or accident and health insurance business in this state. This rule shall be applied in a manner that allows the appointed actuary to utilize his or her professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial standards of practice. However, the commissioner shall have the authority to specify specific methods of actuarial analysis and actuarial assumptions when, in the commissioner’s judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

(2) These rules shall be applicable to all annual statements filed with the office of the commissioner as specified in R 500.997. A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis under R 500.995, and a memorandum in support thereof under R 500.996 shall be required each year.

(3) These rules apply to all annual statements filed with the commissioner as specified in R 500.997, except with respect to companies that are exempted by a determination made by the commissioner. A company that intends to file for an exemption from asset adequacy analysis shall submit a letter of intent to the commissioner not later than December 1 of the calendar year for which the exemption is to be claimed. The commissioner may deny the exemption before December 31 of the same year if an exemption is deemed inappropriate.

R 500.994 General requirements.

Rule 4. (1) The following apply to the Statement of Actuarial Opinion:

(a) There is to be included on or attached to Page 1 of the annual statement for each year beginning with the year in which this rule becomes effective the statement of an appointed actuary, entitled “Statement of Actuarial Opinion,” setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts under R 500.995.

(b) Upon written request by the company, the commissioner may grant an extension of the date for submission of the statement of actuarial opinion.

(2) A “qualified actuary” is an individual who meets the following:

(a) Is a member in good standing of the American Academy of Actuaries.

(b) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements.

(c) Is familiar with the valuation requirements applicable to life and health insurance companies.

(d) Has not been found by the commissioner, or if found, has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing, to have done the following:

(i) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as a qualified actuary.

(ii) Been found guilty of fraudulent or dishonest practices.

(iii) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary.

(iv) Submitted to the commissioner during the past 5 years, under this rule, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this rule including standards set by the Actuarial Standards Board.

(v) Resigned or been removed as an actuary within the past five 5 years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards.

(e) Has notified the commissioner of any action taken by any commissioner of any other state similar to that described in subdivision (d) of this subrule.

(3) An “appointed actuary” is a qualified actuary who is appointed or retained to prepare the Statement of Actuarial Opinion required by this rule, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary. The company shall give the commissioner timely written notice of the name, title, and, in the case of a consulting actuary, the name of the firm, and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in the notice that the person meets the requirements of R 500.994(2). Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements of R 500.994(2). If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

(4) Standards for asset adequacy analysis include the following:

(a) Shall conform to the Standards of Practice as promulgated by the Actuarial Standards Board and on any additional standards under this rule, which standards are to form the basis of the statement of actuarial opinion in accordance with this rule.

(b) Shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

(5) The following liabilities shall be covered:

(a) Under authority of section 830a of the Standard Valuation Law, the statement of actuarial opinion shall apply to all in force business on the statement date, whether directly issued or assumed, regardless of when or where issued, such as reserves of exhibits 8, 9 and 10, and claim liabilities in exhibit 11, Part 1 and equivalent items in the separate account statement or statements.

(b) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods in the Standard Valuation Law, the company shall establish the additional reserve.

(c) Additional reserves established under subdivision (b) of this subrule and deemed not necessary in subsequent years may be released. Any amounts released shall be disclosed in the actuarial opinion for the applicable year. The release of such reserves shall not be deemed an adoption of a lower standard of valuation.

R 500.995 Statement of actuarial opinion based on an asset adequacy analysis.

Rule 5. (1) The statement of actuarial opinion shall consist of the following:

(a) A paragraph identifying the appointed actuary and his or her qualifications under R 500.995(2)(a).

(b) A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items that have been analyzed for asset adequacy and the method of analysis of R 500.995(2)(b), and identifying the reserves and related actuarial items covered by the opinion that have not been so analyzed.

(c) A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, such as anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios of R 500.995(2)(c), supported by a statement of each such expert in the form prescribed by R 500.995(5).

(d) An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities of R 500.995(2)(f).

(e) One or more additional paragraphs shall be needed in individual company cases as follows:

(i) If the appointed actuary considers it necessary to state a qualification of his or her opinion.

(ii) If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion.

(iii) If the appointed actuary must disclose whether additional reserves as of the prior opinion date are released as of this opinion date, and the extent of the release.

(iv) If the appointed actuary chooses to add a paragraph briefly describing the assumptions that form the basis for the actuarial opinion.

(2) The following paragraphs are to be included in the statement of actuarial opinion in accordance with this rule. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language that clearly expresses his or her professional judgment. The opinion shall retain all pertinent aspects of the language provided in this rule.

(a) The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should include a statement such as:

I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the "authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

For a consulting actuary, the opening paragraph should include a statement such as:

“I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies.”

(b) The scope paragraph should include a statement such as:

“I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 20[]. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.

Asset Adequacy Tested Amounts—Reserves and Liabilities					
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
Exhibit 8					
A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefit					
E Disability—Active					
F Disability— Disabled					
G Miscellaneous					

Total (Exhibit 8 Item 1, Page 3)					
Exhibit 9					
A Active Life Reserve					
B Claim Reserve					
Total (Exhibit 9 Item 2, Page 3)					
Exhibit 10					
Premium and Other Deposit Funds (Column 5, Line 14)					
Guaranteed Interest Contracts (Column 2, Line 14)					
Other (Column 6, Line 14)					
Supplemental Contracts and Annuities Certain (Column 3, Line 14)					
Dividend Accumulations or Refunds (Column 4, Line 14)					
Total Exhibit 10 (Column 1, Line 14)					
Exhibit 11 Part 1					
1 Life (Page 3, Line 4.1)					
2 Health (Page 3, Line 4.2)					

Total Exhibit 11, Part 1					
Separate Accounts (Page 3 of the Annual Statement of the Separate Accounts, Lines 1, 2, 3.1, 3.2, 3.3)					
TOTAL RESERVES					

IMR (General Account, Page ____ Line ____)	
(Separate Accounts, Page ____ Line ____)	
AVR (Page ____ Line ____)	(c)
Net Deferred and Uncollected Premium	

(c) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as:

“I have relied on [name], [title] for [for example, “anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios” or “certain critical aspects of the analysis performed in conjunction with forming my opinion”], as certified in the attached statement. I have reviewed the information relied upon for reasonableness.”

A statement of reliance on other experts should be accompanied by a statement by each of the experts in the form prescribed by R 500.995(5).

(d) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should include a statement such as:

“My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to [exhibits and schedules listed as applicable] of the company’s current annual statement.”

(e) If the appointed actuary has not examined the underlying records, but has relied upon data, for example, listings and summaries of policies in force or asset records, prepared by the company, the reliance paragraph should include a statement such as:

“In forming my opinion on [specify types of reserves] I relied upon data prepared by [name and title of company officer certifying in force records or other data] as certified in the attached statements. I evaluated that data for reasonableness and consistency. I also reconciled that data to [exhibits and schedules to be listed as applicable] of the

company’s current annual statement. In other respects, my examination included review of the actuarial assumptions and actuarial methods used and tests of the calculations I considered necessary.”

The section shall be accompanied by a statement by each person relied upon in the form prescribed by R 500.995(5).

(f) The opinion paragraph should include a statement such as:

“In my opinion the reserves and related actuarial values concerning the statement items identified above:

(i) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles.

(ii) Are based on actuarial assumptions that produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions.

(iii) Meet the requirements of the insurance law and rule of the state of [state of domicile]; and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.

(iv) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end, with any exceptions noted below.

(v) Include provision for all actuarial reserves and related statement items which ought to be established. The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on the assets, and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company. At the discretion of the commissioner, this language may be omitted for an opinion filed on behalf of a company doing business only in this state and in no other state.

The actuarial methods, considerations, and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion.

or

The following material changes which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: Describe the change or changes.

Note: Choose one of the above two paragraphs, whichever is applicable.

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

Signature of Appointed Actuary

Address of Appointed Actuary

Telephone Number of Appointed Actuary

Date"

(3) Assumptions for new issues. The adoption for new issues or new claims or other new liabilities of an actuarial assumption that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of R 500.995.

(4) Adverse opinions. If the appointed actuary is unable to form an opinion, then he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reasons for the opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

(5) Reliance on information furnished by other persons. If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness, or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address, and telephone number of the person rendering the certification, as well as the date on which it is signed.

(6) The following shall apply to alternate options:

(a) The Standard Valuation Law gives the commissioner broad authority to accept the valuation of a foreign insurer when that valuation meets the requirements applicable to a company domiciled in this state in the aggregate. As an alternative to the requirements of R 500.995(2)(f)(iii), the commissioner may make 1 or more of the following additional approaches available to the opining actuary:

(i) A statement that the reserves “meet the requirements of the insurance laws and rules of the state of [state of domicile] and the formal written standards and conditions of this state for filing an opinion based on the law of the state of domicile.” If the commissioner chooses to allow this alternative, a formal written list of standards and conditions shall be made available. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year shall apply to statements for that calendar year, and they shall remain in effect until they are revised or revoked. If no list is available, this alternative is not available.

(ii) A statement that the reserves “meet the requirements of the insurance laws and rules of the state of [state of domicile] and I have verified that the company’s request to file an opinion based on the law of the state of domicile has been approved and that any conditions required by the commissioner for approval of that request have been met.” If the commissioner chooses to allow this alternative, a formal written statement of such allowance shall be issued not later than March 31 of the year it is first effective. It shall remain valid until rescinded or modified by the commissioner. The rescission or modifications shall be issued not later than March 31 of the year they are first effective. Subsequent to that statement being issued, if a company chooses to use this alternative, the company shall file a request to do so, along with justification for its use, not later than April 30 of the year of the opinion to be filed. The request shall be deemed approved on October 1 of that year if the commissioner has not denied the request by that date.

(iii) A statement that the reserves “meet the requirements of the insurance laws and rules of the state of [state of domicile] and I have submitted the required comparison as specified by this state.” The following apply:

(A) If the commissioner chooses to allow this alternative, a formal written list of products, to be added to the table in Item (ii), for which the required comparison shall be provided, will be published. If a company chooses to use this alternative, the list in effect on July 1 of a calendar year shall apply to statements for that calendar year, and it shall remain in effect until it is revised or revoked. If no list is available, this alternative is not available.

(B) If a company desires to use this alternative, the appointed actuary shall provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under NAIC codification standards, as specified in the NAIC Accounting Practices & Procedures Manual, as adopted annually in the Commissioner’s Order issued under MCL 500.438. Gross nationwide reserves are the total reserves calculated for the total company in force business directly sold and assumed, indifferent to the state in which the risk resides, without reduction for reinsurance ceded. The information provided shall be at least the following:

(1) Product Type	(2) Death Benefit or Account Value	(3) Reserves Held	(4) Codification Reserves	(5) Codification Standard

(C) The information listed shall include all products identified by either the state of filing or any other states subscribing to this alternative.

(D) If there is no codification standard for the type of product or risk in force or if the codification standard does not directly address the type of product or risk in force, the appointed actuary shall provide detailed disclosure of the specific method and assumptions used in determining the reserves held.

(E) The comparison provided by the company is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(b) Notwithstanding the above, the commissioner may reject an opinion based on the laws and rules of the state of domicile and require an opinion based on the laws of this state. If a company is unable to provide the opinion within 60 days of the request or such other period of time determined by the commissioner after consultation with the company, then the commissioner may contract an independent actuary at the company's expense to prepare and file the opinion.

R 500.996 Description of actuarial memorandum including asset adequacy analysis and regulatory asset adequacy issues summary.

Rule 6. (1) All of the following apply:

(a) In accordance with Section 830a of the Standard Valuation Law, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves. The memorandum shall be made available for examination by the commissioner upon his or her request but shall be returned to the company after examination and shall not be considered a record of the insurance department or subject to automatic filing with the commissioner.

(b) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of R 500.994(2) with respect to the areas covered in such memoranda, and so stated in their memoranda.

(c) If the commissioner requests a memorandum and no such memorandum exists or if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this rule, the commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commissioner.

(d) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the commissioner pursuant to the statute governing this rule. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this rule for any 1 of the current year or the preceding 3 years.

(e) In accordance with Section 830a of the Standard Valuation Law, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in R 500.996(3). The regulatory asset adequacy issues summary shall be submitted not later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary shall be confidential to the same extent and under the same conditions as the actuarial memorandum.

(2) Details of the memorandum section documenting asset adequacy analysis. When an actuarial opinion is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in R 500.994(4) and any additional standards under this rule. It shall specify the following:

(a) For reserves:

(i) Product descriptions including market description, underwriting, and other aspects of a risk profile and the specific risks the appointed actuary deems significant.

(ii) Source of liability in force.

(iii) Reserve method and basis.

(iv) Investment reserves.

(v) Reinsurance arrangements.

(vi) Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis.

(vii) Documentation of assumptions to test reserves for the following:

(A) Lapse rates, both base and excess.

(B) Interest crediting rate strategy.

(C) Mortality.

(D) Policyholder dividend strategy.

(E) Competitor or market interest rate.

(F) Annuitization rates.

(G) Commissions and expenses.

(H) Morbidity. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

(b) The following apply to assets:

(i) Portfolio descriptions, including a risk profile disclosing the quality, distribution, and types of assets.

(ii) Investment and disinvestment assumptions.

(iii) Source of asset data.

(iv) Asset valuation bases.

(v) Documentation of assumptions made for the following:

(A) Default costs.

(B) Bond call function.

(C) Mortgage prepayment function.

(D) Determining market value for assets sold due to disinvestment strategy.

(E) Determining yield on assets acquired through the investment strategy.

(c) For the analysis basis, the documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions. The following apply:

(i) Methodology.

(ii) Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed.

(iii) Rationale for degree of rigor in analyzing different blocks of business, include in the rationale the level of “materiality” that was used in determining how rigorously to analyze different blocks of business.

(iv) Criteria for determining asset adequacy, include in the criteria the precise basis for determining if assets are adequate to cover reserves under “moderately adverse conditions” or other conditions as specified in relevant actuarial standards of practice.

(v) Whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis.

(d) Summary of material changes in methods, procedures, or assumptions from prior year’s asset adequacy analysis.

(e) Summary of results.

(f) Conclusions.

(3) (a) The regulatory asset adequacy issues summary shall include the following:

(i) Descriptions of the scenarios tested, including whether those scenarios are stochastic or deterministic, and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force.

(ii) The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis.

(iii) The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion.

(iv) Comments on any interim results that may be of significant concern to the appointed actuary.

(v) The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested.

(vi) Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability, including but not limited to those affecting cash flows embedded in fixed income securities, and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(b) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

(4) Conformity to Standards of Practice. The memorandum shall include a statement:

“Actuarial methods, considerations, and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum.”

(5) Use of assets supporting the interest maintenance reserve and the asset valuation reserve. An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR shall be disclosed in the table of reserves and liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

(6) The appointed actuary shall retain on file, for at least 7 years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions, and the results obtained.

R 500.997 Effective date.

Rule 7. These rules shall take effect for annual statements beginning with the year 2006.

NOTICE OF PUBLIC HEARING

SOAHR 2005-092
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

ACTUARIAL OPINION UNDER STANDARD VALUATION LAW
AND MEMORANDUM
NOTICE OF PUBLIC HEARING
May 17, 2006 Lake Superior Room
Michigan Library and Historical Center
702 West Kalamazoo Lansing, Michigan
Lake Superior Room - Ground Floor - 10:00 a.m.

The Department of Labor and Economic Growth, Office of Financial and Insurance Services will hold a public hearing on Wednesday, May 17, 2006, at 10:00 a.m. at the Michigan Library and Historical Center, 702 West Kalamazoo, Lansing, Michigan in the Lake Superior Room on the Ground Floor. The hearing will be held to receive public comments on proposed rules rescinding previous rules regarding actuarial opinion under the standard valuation law, R 500.881 to R 500.889, and adding new or modified administrative rules, proposed R 500.991 to R 500.997, to implement MCL 500.830a of the standard valuation law. The proposed rules require asset adequacy analysis and conform to the National Association of Insurance Commissioners (NAIC) current regulation on the same subject. The proposed rules also place the responsibility for certain substantive and procedural actions on the actuary performing the asset adequacy analysis and compiling the company's annual statement.

These rules are promulgated by authority conferred on the commissioner of the Office of Financial and Insurance Services by Sections 210 and 830a of the Insurance Code of 1956, 1956 PA 218, MCL 500.210, and MCL 500.830a. These rules will take effect immediately upon filing with the Secretary of State.

The rules [Rule Set 2005-092 LG] are published on the Michigan Government web site at <http://www.michigan.gov/orr> and in the March 15, 2006 issue of the *Michigan Register*. Comments may be submitted to the following address by 5:00 P.M. on Friday, May 19, 2006. Copies of the draft rules may also be obtained by mail or electronic transmission at the following address:

Office of Financial and Insurance Services, Policy Division
Department of Labor and Economic Growth
P.O. Box 30220
Lansing MI 48909-7720

Phone: Dawn Kobus at 517/373-0435, FAX: 517/335-1727, E-mail: DKobus@Michigan.gov
The hearing site is accessible, including handicapped parking. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. People with disabilities requiring additional accommodations such as information in alternative formats in order to participate in the hearing should contact Dawn Kobus at least 14 working days before the hearing.

PROPOSED ADMINISTRATIVE RULES

SOAHR 2005-098

DEPARTMENT OF LABOR & ECONOMIC GROWTH

DIRECTOR'S OFFICE

BOARD OF REAL ESTATE APPRAISERS – GENERAL RULES

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of labor and economic growth by sections 205, 308, 2605, and 2617 of 1980 PA 299, MCL 339.205, 339.308, 339.2605, and 339.2607, and Executive Reorganization Order Nos. 1996-2, MCL 445.2001, and 2003-18, MCL 445.2011)

Draft 2/28/06

R 339.23101, R 339.23201, R 339.23307, R 339.23311, R 339.23317, R 339.23321, R 339.23326, R 339.23403, and R 339.23405 of the Michigan Administrative Code are amended, and R 339.23320 is added, as follows:

PART 1. GENERAL PROVISIONS

R 339.23101 Definitions.

Rule 101. (1) As used in these rules:

(a) ~~"A course covering the "uniform standards of professional appraisal practice" in section 2627(5) and the "uniform standards of appraisal practice and ethics" in sections 2611(1), 2613(a)(xv), 2614(b)(xv) and 2615(b)(xv) of the act means the 15-hour national USPAP course or the 7-hour national USPAP update seminar, or their equivalent, as required by the AQB real property appraiser qualification criteria, adopted on October 27, 2000, and effective January 1, 2003.~~

~~—(b) "Act" means 1980 PA 299, MCL 339.101 et seq., and known as the occupational code.~~

~~(e)~~ (b) "Board" means the board of real estate appraisers.

~~—(d) (c) "Licensee" means an individual who is licensed under article 26 of the act, including a real estate valuation specialist, a limited real estate appraiser, a state-licensed real estate appraiser, a certified residential real estate appraiser, or a certified general real estate appraiser.~~

~~—(e) (d) "Market analysis as performed by a real estate licensee" means the activity defined in section 2601(a)(i) and (ii) of the act, and means analysis solely for the purpose of establishing potential sale, purchase, or listing price of real property or the rental rate of real property and is not for the purpose of evaluating a property for mortgage lenders in the primary or secondary mortgage market.~~

~~(f)~~ (e) "Real estate consulting", as used in sections 2613, 2614, and 2615 of the act, is that function or functions described in standards 4 and 5 of the uniform standards of the uniform standards of professional appraisal practice.

~~(g)~~ (f) "Transaction value" means any of the following:

- (i) For loans or other extensions of credit, the amount of the loan or the extension of credit.
- (ii) For sales, leases, purchases, and investments, or in exchanges of real property, the market value of the real property interest involved.
- (iii) For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

~~(h)~~ (g) "Uniform standards of professional appraisal practice" or "USPAP" means the uniform standards of professional appraisal practice, published by the appraisal foundation, effective ~~January 1, 2005~~ **June 1, 2006**. Copies of the ~~USPAP 2005~~ edition are available at a cost at the time of adoption of these rules of \$30.00 plus \$8.50 for shipping from the Appraisal Foundation, 1029 Vermont Avenue NW, Suite 900, Washington DC 20005-3517. Mail orders: P.O. Box 96724, Washington DC 20090-6734, phone toll-free 800/805-7857 or 240/864-0100. Copies of the current USPAP **and previous** editions may be downloaded without charge from the following Internet address: www.appraisalfoundation.org. The ~~USPAP 2005~~ **current USPAP and previous** editions may be reviewed or purchased from the department of labor and economic growth by mailing to the Bureau of Commercial Services, 2501 Woodlake Circle, Okemos Michigan ~~4886448824~~, mailing address, P.O. Box 30018, Lansing MI 48909, phone: 517/241-9201, at a cost as of the time of adoption of these rules of \$50.00 plus \$11.00 shipping and handling costs.

(2) Terms defined in articles 1 to 6 and 26 of the act have the same meanings when used in these rules.

PART 2. LICENSING

R 339.23201 Acceptable appraisal experience generally.

Rule 201. (1) Credit for appraisal experience shall be based on the actual performance of appraisals. The department shall not grant experience credit to an applicant solely on the basis of total hours of employment in an appraisal firm or other entity. The actual performance of appraisals includes time spent in such professional activities as personally inspecting real property, conducting research and developing materials supporting the appraisal, preparing the content of appraisal reports, and presenting the appraisal to the client. It does not include time spent in the solicitation of business, negotiation and development of client agreements, clerical tasks, or business accounting and collections, even though such tasks may be appropriately billed to a client as a necessary part of performing the appraisal.

(2) Credit shall not be given for performing more than 40 hours per week of professional experience unless specific experience, which is verified by a supervisor, can be provided to demonstrate that an individual worked more hours in that week. However, experience in excess of 40 hours a week that is obtained before January 1, 1992, may be verified by a supervisor's affidavit.

(3) Hours credited per appraisal shall be credited based upon the number of hours spent on each assignment, not to exceed the number of hours in the following table:- Requests for exceptions shall be approved or denied by the department.

PROPERTY TYPES	MAX. ALLOWABLE HOURS
SINGLE FAMILY RESIDENTIAL	8

RESIDENTIAL MULTI FAMILY (2 to 4 UNITS)	20
RESIDENTIAL MULTI FAMILY (5 to 12 UNITS)	36
RESIDENTIAL MULTI FAMILY (13 OR MORE UNITS)	40
RESIDENTIAL LOT	6
SUBDIVISIONS	40
RURAL RESIDENTIAL LAND (IMPROVED 20 ACRES OR LESS)	16
RURAL RESIDENTIAL LAND (VACANT 20 ACRES OR LESS)	12
AGRICULTURAL FARM OR FOREST LAND	40
INDUSTRIAL (INDUSTRIAL PARK, BUSINESS CAMPUS, WAREHOUSING, MANUFACTURING PLANT, ETC.)	40
INDUSTRIAL PARK OR BUSINESS CAMPUS LAND (VACANT)	24
MULTI FAMILY LAND (VACANT)	24
COMMERCIAL PROPERTIES: SINGLE TENANT MULTI TENANT (IMPROVED OFFICE BLDG, RETAIL STORE, RESTAURANT, SERVICE STATION, BANK, DAY CARE CENTER, NURSING HOME, ETC.)	40 80
COMMERCIAL LAND (VACANT)	24

(4) Qualifying experience in performing real estate appraisals on or after January 1, 1992, shall be obtained while the individual is licensed as a ~~real estate valuation specialist, limited~~ real estate appraiser, certified residential real estate appraiser, or state licensed real estate appraiser or is properly exempt from licensing.

(5) A limited real estate appraiser shall be subject to direct supervision by a supervising appraiser who shall be state licensed or certified in good standing. The supervising appraiser shall be responsible for the training and direct supervision of the limited real estate appraiser by accepting responsibility for the appraisal report by signing and certifying that the report is in compliance with the uniform standards of professional appraisal practice by doing both of the following:

- (a) Reviewing the appraiser trainee appraisal report or reports.
- (b) Personally inspecting each appraised property with the limited real estate appraiser until the supervising appraiser determines the limited appraiser is competent in accordance with the competency provision of the uniform standards of professional appraisal practice (USPAP) for the property type. Separate logs shall be maintained for each supervising appraiser, and each log shall contain the signature, the license or certification number, and the level of licensure of the supervising appraiser.

PART 3. APPRAISER EDUCATION

R 339.23307 Conduct of courses; changes in courses.

Rule 307. (1) A course sponsor shall comply with all of the following requirements:

(a) A course shall not be represented to licensees or to the public as meeting the requirements of the act and these rules until it has been approved by the department.

(b) Solicitation of organizational membership, employment, or business-related products and services is prohibited during qualifying course classroom hours.

(c) A sponsor shall appoint an individual as coordinator for the sponsor's courses. The coordinator shall be responsible for supervising the program of courses and assuring compliance with the code and these rules. The coordinator need not be a licensee.

~~(d) A sponsor shall permit only an~~ An instructor who meets the requirements of R 339.23309 **(3) and (4)** ~~(2) to shall~~ teach the course.

(e) Each student shall be provided with a written syllabus that contains, at a minimum, all of the following information:

(i) The course title.

(ii) The times and dates of the course offering.

(iii) The name, business address, and telephone number of the course coordinator and the name of the instructor.

(iv) A detailed outline of the subject matter to be covered and the estimated time to be devoted to each subject.

(f) A course shall not be credited for more than 10 classroom hours of instruction in 1 calendar day.

Calculations of classroom hours for a course shall not include any of the following:

(i) Meals.

(ii) Breaks.

(iii) Registration.

(iv) Required reading.

(v) Outside assignments.

(g) Each course shall reflect the most current version of state and federal laws and regulations.

(h) A sponsor shall permit the department to review a course at any time or to inspect the records of a course sponsor during normal business hours.

(i) A sponsor whose programs are transferred to another entity shall arrange for student records to be maintained permanently by the successor entity. The successor entity shall assure that course completion information is available to students who need to verify their education.

(2) The department shall accept or reject a change in, or addition to, the information provided to the department on an original application ~~within 30 days of notification of the change~~. The department may determine that a proposed change cannot be made without the submission of additional supporting documentation or that the extent or number of changes requested require the sponsor to complete a new application for approval.

(3) The department may request a sponsor to provide any additional supporting documentation that is necessary for the department to approve the course.

(4) Department approved courses shall expire 3 years from the date of the course approval, at which time the course approval shall be subject to renewal. A sponsor shall notify the department of its intent to renew or discontinue previously approved course or courses by satisfactorily completing and submitting a course renewal form provided by the department. Course renewal forms shall be received by the department at least 60 days before the expiration date. If a satisfactorily completed

renewal form is not received by the department by the expiration date, the course shall cease to be departmentally approved beyond the expiration date. Course renewal forms are not valid and shall not be accepted by the department after the expiration date. Sponsors requesting approval for course renewal after the expiration date shall complete and submit an application for original course approval.

(5) If a sponsor desires to change a course's content/curriculum and/or hours of credit, the sponsor shall reapply for departmental approval of the changes to the course by completing an application for course approval, obtained from the department. The department shall notify the sponsor whether the proposed course change is approved or not. The sponsor shall not offer the course with the proposed changes without departmental approval.

R 339.23311 Courses not acceptable for prelicensure or continuing education.

Rule 311. The department shall not approve a prelicensure or continuing education course, nor shall it grant credit to a licensee under section 2627(5) of the act for any of the following:

(a) Courses that do not provide student access to an instructor during the course.

~~(b) For prelicensure education, distance education courses provided via the Internet.~~

~~(c) (b)~~ Courses that deal with such employment-related topics such as explanations of rights, benefits, and responsibilities; organizational structure; and on-the-job methods, processes, or procedures.

~~(d) (c)~~ Membership in or service in an office, or on a committee of a professional, occupational, trade, or industry society or organization.

~~(e) (d)~~ Conferences, delegate assemblies, or similar meetings of professional organizations for policy-making purposes.

~~(f) (e)~~ Meetings and conventions of societies and associations; however, educational activities which are provided independently by an approved course sponsor and which are held concurrently with such meetings may be given credit.

~~(g) (f)~~ Attendance at lecture series, cultural performances, entertainment, or recreational meetings or activities or participation in travel groups, unless these activities are an integral part of a course that is approved pursuant to these rules.

~~(h) (g)~~ On-the-job training, apprenticeships, and other work experiences.

~~(i) (h)~~ Courses in sales promotion, motivation, marketing, psychology, time management, or mechanical office or business skills, including typing, speed-reading, or the use of office machines or equipment other than calculators or computers.

PART 3A. PRELICENSURE EDUCATION

R 339.23317 Prelicensure education; application for course approval; forms; requirements; unacceptable courses.

Rule 317. (1) An application for approval of a prelicensure real estate appraiser education course shall be made on forms provided by the department. The department shall accept or reject ~~an~~ the application. ~~within 60 days of receipt of the completed application.~~

(2) The application shall include all of the following information:

(a) The course title.

(b) The number of classroom hours to be given for completion of the course. As provided in section 2617(3) of the act, a course shall be not less than 15 classroom hours in length.

(c) The name, business address, and telephone number of the sponsor.

- (d) The name, business address, and telephone number of the course coordinator.
- (e) The name, license number, and qualifications of instructors.
- (f) A detailed outline, ~~as it will appear in the student syllabus~~, of the subject matter to be covered and the number of classroom hours to be devoted to each topic, **as it will appear in the student syllabus**.
- ~~(g)~~ **(g)** A summary of the required topics for prelicensure that are covered in the course completed on the **subject matter matrix provided by the department**.
- ~~(f)~~ A list of textbooks and reference materials.
- ~~(g)~~ **(h)** The methodology for verifying and monitoring attendance, including the class makeup policy. A sponsor shall have a written makeup policy for students who are absent from all or a part of regularly scheduled class sessions. If there are no opportunities to make up missed sessions, that policy shall be so stated.
- ~~(h)~~ **(i)** The standards a student must meet to complete the course, including assignments, projects, examinations, and the passing score on the examination that is required pursuant to the provisions of section 2617(3) of the act to be given at the completion of the course for a student to demonstrate mastery of the material covered.
- ~~(k)~~ A sample of any advertising material, announcements, or brochures to be used to promote the course.
- ~~(j)~~ **(j)** Proof that the sponsor is an entity that may offer prelicensure real estate appraisal education courses in accordance with the provisions of section 2617(2) of the act.
- ~~(3)~~ Distance education courses provided via the Internet are unacceptable for prelicensure education.

R 339.23320 Prelicensure requirements for uniform standards of professional appraisal practice (USPAP).

Rule 320. (1) Applicants for licensure shall successfully complete the 15-hour national USPAP course required by the appraiser qualification board (AQB). Equivalency shall be determined through the AQB course approval program or by an alternate method established by the AQB.

(2) USPAP qualifying education credit shall only be awarded when the class is instructed by the following:

- (a) An AQB certified instructor or instructors.**
- (b) At least 1 residential or general state certified appraiser.**

PART 3B. CONTINUING EDUCATION

R 339.23321 Continuing education; application for course approval; forms; requirements.

Rule 321. (1) An application for approval of a continuing education course shall be made on forms provided by the department. The department shall accept or reject the application. ~~within 60 days after receipt of the completed application.~~

- (2) The application shall include all of the following information:
 - (a) The course title.
 - (b) The number of classroom hours to be given for completion of the course. As provided in section 2617 of the act, a course shall be not less than 2 classroom hours in length.
 - (c) The name, business address, and telephone number of the sponsor.
 - (d) The name, business address, and telephone number of the course coordinator.
 - (e) The name, license number, and qualifications of instructors.

(f) A detailed outline, ~~as it will appear in the student syllabus,~~ of the subject matter to be covered and the **number of classroom hours estimated time** to be devoted to each topic, **as it will appear in the student syllabus.**

~~(g) A list of textbooks and reference materials.~~

~~(h)~~ **(g)** The methodology for verifying and monitoring attendance. The course sponsor shall be responsible for determining the number of hours, if any, that will be granted to a licensee who does not attend all planned classroom hours. A licensee shall not receive credit for attending the same course more than 1 time during the same license renewal cycle.

~~(i)~~ **(h)** The standards a student must meet to complete the course, including assignments, projects, or examinations. The sponsor at its discretion may give course examinations, but examinations are not required by the act or these rules for continuing education courses.

~~(j) A sample of any advertising material, announcements, or brochures to be used to promote the course.~~

~~(k)~~ **(i)** Proof that the sponsor is an entity that may offer continuing education courses in accordance with the provisions of section 2617(2) of the act.

~~(l)~~ **(j)** Information to demonstrate that the course meets the requirements of section 2627(3) and (4) of the act and is designed to improve and maintain the capability of a licensee to perform activities regulated by the act.

R 339.23326 Continuing education requirements for licensees.

Rule 326. ~~As part of the continuing education requirements defined in section 2627 of the act, each licensee shall complete a minimum of every 4 years a 2 hour course on Michigan appraiser licensing law and rules, or a course or seminar which contains a minimum of 2 hours devoted to Michigan appraiser licensing law and rules and every 2 years shall successfully complete the 7 hour national USPAP update course or its equivalent.~~

(1) Appraisers shall successfully complete the 7-hour national USPAP update course, or its equivalent, at least every 2 years. Equivalency shall be determined through the AQB course approval program or by an alternate method established by the AQB.

(2) USPAP qualifying education credit shall only be awarded when the class is instructed by the following:

(a) An AQB certified instructor or instructors.

(b) At least 1 residential or general state certified appraiser.

(3) Every 4 years, appraisers shall successfully complete at least 2 hours of continuing education devoted to Michigan appraiser license law and rules.

PART 4. STANDARDS OF CONDUCT

R 339.23403 ~~Real estate valuation specialist; Limited limited~~ real estate appraiser; state licensed real estate appraiser; certified residential real estate appraiser; certified general real estate appraiser; authorized functions.

Rule 403. (1) If a ~~real estate valuation specialist or~~ limited real estate appraiser is properly qualified to undertake an assignment, a ~~real estate valuation specialist or~~ limited real estate appraiser may perform either of the following appraisal services, if the report is signed by a supervisory state-licensed, certified residential or certified general real estate appraiser, as specified in section 2607(7) of the act, who by virtue of signing the report, assumes full responsibility for the accuracy of the report content and conclusions:

(a) Appraise properties that are not federally related transactions or real estate related financial transactions.

(b) Assist a state-licensed, certified residential, or certified general real estate appraiser in the development of an appraisal for a federally related transaction or a real estate related financial transaction. The ~~real estate valuation specialist or~~ limited real estate appraiser shall not sign the report; however, the state licensed, certified residential, or certified general real estate appraiser shall acknowledge the specific contributions of the ~~real estate valuation specialist or~~ limited real estate appraiser within the appraisal report.

(2) If a state licensed real estate appraiser is properly qualified to undertake an assignment, a state-licensed real estate appraiser may perform any of the following appraisal services:

(a) Appraise properties that are not federally related transactions.

(b) Appraise 1 to 4-family residential properties, unless the transaction value is \$1,000,000.00 or more or the property is deemed to be complex and therefore required to be appraised by a certified residential or certified general real estate appraiser.

(c) Appraise nonresidential properties for federally related transactions and real estate related financial transactions where the transaction value is less than \$250,000.00.

(d) Assist a certified residential or certified general real estate appraiser in the development of an appraisal of a complex residential property or a nonresidential property that is the subject of a federally related transaction, as appropriate. The state licensed real estate appraiser shall not sign the report; however, the certified residential or certified general real estate appraiser shall acknowledge the specific contributions of the state-licensed real estate appraiser within the appraisal report.

(3) A certified residential real estate appraiser, if properly qualified to undertake an assignment, may perform any of the following appraisal assignments:

(a) Appraise properties that are not federally related transactions.

(b) Appraise 1 to 4-family residential properties without regard to complexity or value.

(c) Appraise nonresidential properties for federally related transactions and real estate related financial transactions where the transaction value is less than \$250,000.00.

(d) Assist a certified general real estate appraiser in the development of an appraisal of a nonresidential property that is the subject of a federally related transaction, as appropriate. The certified residential real estate appraiser shall not sign the report. However, the certified general real estate appraiser shall identify the specific contributions of the certified residential real estate appraiser within the appraisal report.

(4) ~~Signatures are required on appraisal reports according to the following chart.~~ The licensee authorized to sign the report shall identify all participating licensees and their contributions to the report. **Signatures are required on appraisal reports according to the following chart:**

Signatures Required: By License Level And Transaction Categories	Non- Federally Related Transactions & Non-Real Estate- Related Financial Transactions	Federally Related Transactions 1-4 Family Properties Less Than \$1 Million In Transaction Value	Federally Related Transaction s 1-4 Family Properties More Than \$1 Million Or Complex Properties More Than \$250,000 *	Federally Related Transactions Nonresiden- tial Properties Less Than \$250,000 In Transaction Value	Federally Related Transactions Nonresiden- tial More Than \$250,000 In Transaction Value
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			Transaction Value		
Limited Appraiser	YES	NO	NO	NO	NO
State- Licensed Appraiser	YES	YES	NO	YES	NO
Certified Residential Appraiser	YES	YES	YES	YES	NO
Certified General Appraiser	YES	YES	YES	YES	YES

R 339.23405 Advertising.

Rule 405. (1) A licensee shall state the level of license held in all advertising. Merely stating that the person is licensed does not satisfy the provisions of this subrule. However, a directory listing or similar situation where space is limited, it shall be sufficient disclosure for a licensee to use the words certified general, certified residential, state-licensed, **or** limited appraiser, ~~or valuation specialist~~, as appropriate, without additional wording.

(2) A licensee shall place his or her license number and license level on all reports and shall produce evidence of licensing upon request by a member of the public or a representative of the department. A license number shall not be required in advertising material.

NOTICE OF PUBLIC HEARING

**SOAHR 2005-098
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
BUREAU OF COMMERCIAL SERVICES**

**REAL ESTATE APPRAISER RULES
NOTICE OF PUBLIC HEARING
Tuesday, March 28, 2006
2501 Woodlake Circle Okemos Michigan
Conference Room 1, 2nd floor 9:00 a.m.**

The Department of Labor and Economic Growth will hold a public hearing on Tuesday, March 28, 2006 at the Bureau of Commercial Services, 2501 Woodlake Circle, Okemos, Michigan in Conference Room 1 at 9:00 a.m. The hearing will be held to receive public comments on proposed changes to the Administrative Rules for Real Estate Appraisers.

The proposed rules are to update the rules, incorporating the most current edition of the Uniform Standards of Professional Appraisal practice, and to comply with federal standards for education, experience and examination.

These rules are promulgated by authority conferred on the department of labor and economic growth by sections 205, 308, 2605, and 2617 of 1980 PA 299, MCL 339.205, 339.308, 339.2605, and 339.2607, and Executive Reorganization Orders No. 1996-2, MCL 445.2001, and 2003-18, MCL 445.2011. The rules are proposed to take effect immediately after filing with the Secretary of State.

The rules [Rule Set 2005-098] are published on the Michigan Government web site at <http://www.michigan.gov/orr> and in the March 15, 2006 issue of the *Michigan Register*. Comments may be submitted to the following address by 5:00 P.M. on April 4, 2006. Copies of the draft rules may also be obtained by mail or electronic transmission at the following address:

Department of Labor and Economic Growth
Amy Shell, Bureau of Commercial Services
P. O. Box 30018
Lansing MI 48909-7518

Phone: 517/241-9219 FAX: 517/ 241-0290 E-mail: shella1@michigan.gov

The meeting site is accessible, including handicapped parking. People with disabilities requiring additional accommodations in order to participate in the meeting should call Amy Shell at (517) 241-9219 (voice) or (888) 605-6722 (TTY) at least 10 workdays prior to the hearing.

**CORRECTION OF OBVIOUS
ERRORS IN PUBLICATION**

MCL 24.256(1) states in part:

“Sec. 56. (1) The State Office of Administrative Hearings and Rules shall perform the editorial work for the Michigan register and the Michigan Administrative Code and its annual supplement. The classification, arrangement, numbering, and indexing of rules shall be under the ownership and control of the State Office of Administrative Hearings and Rules, shall be uniform, and shall conform as nearly as practicable to the classification, arrangement, numbering, and indexing of the compiled laws. The State Office of Administrative Hearings and Rules may correct in the publications obvious errors in rules when requested by the promulgating agency to do so...”

**CORRECTION OF OBVIOUS
ERRORS IN PUBLICATION**

MEMORANDUM

DATE: February 22, 2006

TO: Norene Lind, Regulatory Affairs Manager
State Office of Administrative Hearings and Rules

FROM: Jeannine Benedict, Administrative Rules Specialist
MDLEG, Office of Policy and Legislative Affairs

SUBJECT: Request for correction of MIOSHA CS Part 10 ‘Lifting and Digging Equipment’ Rule
R 408.41010a pursuant to Administrative Procedures Act, Section 56(1), MCL 24.256 (1).

The MIOSHA Standards Section, as a promulgating agency, is writing to request that the State Office of Administrative Hearings and Rules exercise its discretion to an obvious error in the MIOSHA Rules, pursuant to the Administrative Procedures Act, Section 56(1), MCL 24.256 (1).

The error is in section R 408.41010a. The rule was last amended effective December 27, 2000.

Rule number R 408.41010a(3)(a) references a rule number R 408.41023a(2)(b); the correct number is R 408.41025a(2). This error was made when the rule was amended July 20, 1995.

The language should read:

R 408.41010a(3)(a) Land any attached load, except as provided in **R 408.41025a(2).**
~~R 408.41023a(2)(b).~~

If you have any questions about this transmittal, you may contact me at 517.335.2626.

cc: Marsha Parrott-Boyle, MIOSHA Standards Program Manager

**CORRECTION OF OBVIOUS
ERRORS IN PUBLICATION**

MEMORANDUM

DATE: February 22, 2006

TO: Norene Lind, Regulatory Affairs Manager
State Office of Administrative Hearings and Rules

FROM: Jeannine Benedict, Administrative Rules Specialist
MDLEG, Office of Policy and Legislative Affairs

SUBJECT: Request for correction of MIOSHA GI Part 21 ‘Powered Industrial Trucks’ Rule R 408.12168, pursuant to Administrative Procedures Act, Section 56(1), MCL 24.256 (1).

The MIOSHA Standards Section, as a promulgating agency, is writing to request that the State Office of Administrative Hearings and Rules exercise its discretion to an obvious error in the MIOSHA Rules, pursuant to the Administrative Procedures Act, Section 56(1), MCL 24.256 (1).

The error is in section R 408.12168. The rule was amended effective April 27, 2000.

The rule number R 408.12168 references a rule number R 408.12121 that was deleted effective April 27, 2000. The reference needs to be corrected to a current section.

The language should read:

R 408.12168. Load backrest extensions.

Rule 2168. A load backrest extension, manufactured in accordance with rule **R 408.12111** ~~2121~~, shall be used whenever necessary to minimize the possibility of a load, or part of it, falling rearward.

If you have any questions about this transmittal, you may contact me at 517.335.2626.

cc: Marsha Parrott-Boyle, MIOSHA Standards Program Manager

**CORRECTION OF OBVIOUS
ERRORS IN PUBLICATION**

MEMORANDUM

DATE: February 8, 2006

TO: Norene Lind, Regulatory Affairs Manager
State Office of Administrative Hearings and Rules

FROM: Jeannine Benedict, Administrative Rules Specialist
MDLEG, Office of Policy and Legislative Affairs

SUBJECT: Request for correction of the Workers' Compensation Health Care Services Rule R 418.10923B , pursuant to Administrative Procedures Act, Section 56(1), MCL 24.256 (1).

DATE: 2005 MR 4, Eff. Feb. 10, 2005.

The Workers' Compensation Agency - Health Care Services division, as a promulgating agency, is writing to request that the State Office of Administrative Hearings and Rules exercise its discretion to an obvious error in the Workers' Compensation Health Care Services Rules, pursuant to the Administrative Procedures Act, Section 56(1), MCL 24.256 (1).

The error is contained in R 418.10923B. The rule was promulgated as part of the annual revisions to the Health Care Services rules, 2005 MR 4, Eff. Feb. 10, 2005.

The electronic version indicates rule number R 418.10923B Billing for freestanding surgical outpatient facility, (FSOF).with Rule 923B, after the heading

The affected line in currently reads (*italics added*):

R 418.10923B Billing for freestanding surgical outpatient facility, (FSOF).
Rule 10923B...

The language should read:

R 418.10923b...(changing only the capital B to a lower case b).
Rule 10923b...(changing only the capital B to a lower case b).

If you have any questions about this transmittal, you may contact me at 517.335.2626.

cc: Agency Liaison, Michelle Mapes

**OPINIONS OF THE
ATTORNEY GENERAL**

MCL 14.32 states in part:

“It shall be the duty of the attorney general, when required, to give his opinion upon all questions of law submitted to him by the legislature, or by either branch thereof, or by the governor, auditor general, treasurer or any other state officer”

MCL 24.208 states in part:

“Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

** * **

(j) Attorney general opinions. ”

OPINIONS OF THE ATTORNEY GENERAL

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

CAMPAIGN FINANCE ACT: Political Action Committees – payroll
deduction plans

CAMPAIGN CONTRIBUTIONS:

CIVIL SERVICE COMMISSION:

A payroll deduction plan in the state classified civil service under which state personnel and other resources are used to record, collect, and disburse employee contributions to a political action committee would violate section 57 of the Michigan Campaign Finance Act, MCL 169.257, which prohibits the use of public resources to make a political contribution. A labor union's offer to reimburse the State for the expenses involved in administering a payroll deduction plan to facilitate employee contributions to a political action committee would neither obviate the violation nor permit the implementation of an otherwise prohibited plan.

Section 57 of the Michigan Campaign Finance Act, MCL 169.257: (a) is a valid exercise of legislative authority to regulate the use of public resources and to "preserve the purity of elections" under Const 1963, art 2, § 4; (b) does not infringe upon the plenary authority granted the Civil Service Commission under Const 1963, art 11, § 5; and (c) precludes the Civil Service Commission from approving provisions of a collective bargaining agreement that would require the State to administer a payroll deduction plan facilitating state employee contributions to a political action committee.

Opinion No. 7187

February 16, 2006

Honorable Tonya Schuitmaker
State Representative
The Capitol
Lansing, MI 48909-7514

You have asked several questions concerning the Civil Service Commission's authority to approve a payroll deduction plan for state employees in the classified civil service that would involve recording, collecting, and disbursing employee contributions to a union political action committee (PAC).

You first ask whether Michigan law prohibits the Civil Service Commission from approving the provisions of a collective bargaining agreement that would require the State to administer a payroll

deduction plan.¹ In the absence of a specific plan to review, it is presumed for purposes of this opinion that the plan would involve solicitation of the state employee to participate in the plan, recording of the employee's agreement to participate, and the collection and disbursement of the contributions to the PAC through the state payroll system.² These actions will necessarily involve the State's use of public resources to effectuate the political contributions of its employees.

Over a period of more than 40 years, the Attorney General has issued a series of opinions consistently concluding that, absent authority, a public body cannot use public resources to influence the electorate to support or oppose a particular candidate or ballot

¹ Civil Service Rules permit payroll deductions for membership dues and service fees relating to a union's operation as an exclusive bargaining representative. See Civil Service Rules 6-7.1, 6-7.2, and 6-7.3. A payroll deduction to facilitate payments to a PAC, however, would not fall within the type of deductions permitted by these rules.

² It is presumed that these contributions would be deposited by the State into a separate segregated fund established by the labor union to receive political contributions. See MCL 169.255(1).

proposal.¹ In 1995, the Legislature addressed this subject by amending the Michigan Campaign Finance Act (MCFA), 1976 PA 388, MCL 169.201 *et seq*, to add section 57 to prohibit public bodies from using public resources to make contributions:²

(1) A *public body* or an individual acting for a public body *shall not use or authorize the use of* funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other *public resources to make a contribution* [MCL 169.257(1); emphasis added.]

¹ See, e.g., OAG, 1965-1966, No 4291, p 1 (January 4, 1965) (school district could not spend public funds to advocate a favorable vote on a tax and bond ballot proposal); OAG, 1979-1980, No 5597, p 482 (November 28, 1979) (State Civil Rights Commission could not use public funds "to urge the electorate to support or oppose a particular candidate or ballot proposal"); OAG, 1987-1988, No 6423, pp 33, 35 (February 24, 1987); OAG, 1991-1992, No 6710, pp 125, 127 (February 13, 1992); OAG, 1993-1994, No 6763, p 45 (August 4, 1993) ("School districts may not permit their offices and phone equipment to be used in a restrictive manner for advocacy of one side of a ballot issue School districts may not endorse a particular candidate or ballot proposal"); OAG, 1993-1994, No 6785, p 102 (February 1, 1994). See also, OAG, 1991-1992, No 6709, p 124 (February 11, 1992) (state agency cannot use public funds to lobby unless authorized by law to do so), and *Mosier v Wayne County Bd of Auditors*, 295 Mich 27, 31; 294 NW 85 (1940) (addressing county board's lack of authority to expend county resources for political purpose).

² Although not relevant here, section 57(1) lists certain activities that are not proscribed by that subsection of the MCFA:

- (a) The expression of views by an elected or appointed public official who has policy making responsibilities.
- (b) The production or dissemination of factual information concerning issues relevant to the function of the public body.
- (c) The production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication.
- (d) The use of a public facility owned or leased by, or on behalf of, a public body if any candidate or committee has an equal opportunity to use the public facility.
- (e) The use of a public facility owned or leased by, or on behalf of, a public body if that facility is primarily used as a family dwelling and is not used to conduct a fund-raising event.
- (f) An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on his or her own personal time, is expressing his or her own personal views, is expending his or her own personal funds, or is providing his or her own personal volunteer services. [MCL 169.257(1)(a)-(f).]

This provision applies to the State and all its agencies, departments, boards, and commissions, including the Civil Service Commission.¹ To the extent the administration of a payroll deduction plan requires a state agency to utilize state equipment, state personnel, state supplies and office space, or other state resources, to record, collect, and disburse the payroll deductions, this constitutes the use of "public resources" within the scope of section 57.

Under the MCFA, a "contribution" is defined as:

[A] *payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question.* [MCL 169.204(1); emphasis added.]

Where the Legislature has defined a term in a statute, that definition must be applied and is binding on the courts. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 136; 545 NW2d 642 (1996). An employee's payroll deduction payment to a PAC is a "contribution" for purposes of the MCFA. Political action committees are generally created for the specific purpose of making contributions or expenditures on behalf of or against the nomination or election of candidates, or in support of or against ballot questions.² Thus,

¹ MCL 169.211(6) provides that "public body" means one or more of the following:

- (a) A state agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.
- (b) The legislature or an agency, board, commission, or council in the legislative branch of state government.
- (c) A county, city, township, village, intercounty, intercity, or regional governing body; a council, school district, special district, or municipal corporation; or a board, department, commission, or council or an agency of a board, department, commission, or council.
- (d) Any other body that is created by state or local authority or is primarily funded by or through state or local authority, which body exercises governmental or proprietary authority or performs a governmental or proprietary function.

The Civil Service Commission is a state commission within the executive branch of government. See, e.g., *Straus v Governor*, 459 Mich 526, 535, 537, n 7; 592 NW2d 53 (1999).

² The term "political action committee" is not defined in the MCFA. Rather, it is a term of art that has gained common acceptance and usage to describe independent committees or political committees established under the MCFA to support or

the employees' payroll deductions fall squarely within the MCFA's definition of "contribution" since they constitute "payment[s] . . . or donation[s] of money . . . made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question." MCL 169.204(1).

Section 57 prohibits a public body from using public resources "to *make* a contribution or expenditure." MCL 169.257(1) (emphasis added). The word "make" is not defined in the statute. Undefined statutory terms are to be given their plain and ordinary meaning, MCL 8.3a, and "when considering a nonlegal word or phrase that is not defined within a statute, resort to a layman's dictionary . . . is appropriate." *Horace v City of Pontiac*, 456 Mich 744, 756; 575 NW2d 762 (1998). The word "make" means "'to cause to exist or happen; create.'" *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511, 516; 573 NW2d 611 (1998), quoting the *American Heritage Dictionary, Second Edition*. A public body's use of its resources to administer the payroll deduction plan would "cause" the contribution to "happen," and thus violate section 57.¹

You also ask whether a union's offer to reimburse the State for expenses involved in administering a payroll deduction plan would permit implementation of an otherwise prohibited plan.

oppose candidates. See MCL 169.203(4), 169.208(3), 169.211(2). See also, MCL 8.3a (setting forth the rule requiring that words and phrases be construed according to the common and approved usage of the language). These committees must register with the Secretary of State or county clerk, adhere to contribution limits regarding contributions they make, and file periodic campaign finance reports. See MCL 169.224, 169.226, 169.252. Labor organizations are prohibited from using treasury funds to make contributions or expenditures on behalf of or against candidates, MCL 169.254, unless they establish a separate segregated fund under MCL 169.255(1) – in other words, a political action committee. MCL 169.255 specifically limits the use of a separate segregated fund "to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, political committees, and independent committees." The Attorney General opined in OAG, 1993-1994, No 6785, *supra*, n 3, that public schools and universities, as public bodies, are prohibited from establishing separate segregated funds. In the absence of a specific factual scenario, it is assumed that the union PAC will use the payroll deduction payments to influence, or assist in, the nomination or election of a candidate or for the qualification, passage, or defeat of a ballot question.

Section 57 states that a public body "shall not use or authorize the use of . . . public resources to make a contribution." There is nothing in the language of section 57 that indicates a violation may be remedied or excused through a reimbursement mechanism. Indeed, section 57 imposes significant penalties for its violation:

(2) A person who knowingly violates this section is guilty of a misdemeanor punishable, if the person is an individual, by a fine of not more than \$1,000.00 or imprisonment for not more than 1 year, or both, or if the person is not an individual, by 1 of the following, whichever is greater:

(a) A fine of not more than \$20,000.00.

(b) A fine equal to the amount of the improper contribution or expenditure.
[MCL 169.257(2).]

These penalties demonstrate the Legislature's clear intent to prohibit and punish this activity. Where the language of a statute is clear, it must be enforced as written and no provisions may be added that the Legislature did not choose to include. *Jones v Dep't of Corrections*, 468 Mich 646, 655-656; 664 NW2d 717 (2003) (the courts may not engraft onto the terms of a statute a remedy that has no basis in the plain language of the statute); *Omne Financial, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999). There is no basis in the plain language of section 57 for reading in a remedy or exception to the prohibition for unions that offer to reimburse the State for its use of public resources. To do so would be contrary to the intent of the Legislature as expressed in the plain language of section 57.²

¹ It is worth emphasizing that public employees, like all citizens, are free to make political contributions to the candidates or causes of their choice. But they have no First Amendment or other right to have the government subsidize those contributions through a payroll deduction plan. See *Toledo Area AFL-CIO Council v Pizza*, 154 F3d 307, 319-322 (CA 6, 1998).

² Similarly, a violation could not be avoided by requiring the union to pay the anticipated costs before they are actually incurred. The language of MCL 169.257(1) unqualifiedly prohibits the use of public resources for the described political purposes, making no exception for compensated uses. This is, therefore, distinguishable from the circumstances analyzed in *Michigan State AFL-CIO v Civil Service Comm*, 455 Mich 720, 734; 566 NW2d 258 (1997) (addressing section 4 of the Political Freedom Act, MCL 15.404).

It is my opinion, therefore, that a payroll deduction plan in the state classified civil service under which state personnel and other resources are used to record, collect, and disburse employee contributions to a political action committee would violate section 57 of the Michigan Campaign Finance Act, MCL 169.257, which prohibits the use of public resources to make a political contribution. A labor union's offer to reimburse the State for the expenses involved in administering a payroll deduction plan to facilitate employee contributions to a political action committee would neither obviate the violation nor permit the implementation of an otherwise prohibited plan.

Having determined that section 57 of the MCFA prohibits a PAC payroll deduction plan for the state classified service, the only remaining question is whether that statute improperly infringes upon the plenary authority granted the Civil Service Commission under Const 1963, art 11, § 5.

Const 1963, art 11, § 5 provides, in relevant part, that the Commission:

[S]hall classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, *make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.* [Emphasis added.]

Article 11, § 5 has been described as vesting the Commission "with plenary powers in its sphere of authority." *Plec v Liquor Control Comm*, 322 Mich 691, 694; 34 NW2d 524 (1948); *Viculin v Dep't of Civil Service*, 386 Mich 375; 192 NW2d 449 (1971). The Commission's "sphere of authority" includes the broad power to "make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service." The question is whether section 57, which prohibits a payroll deduction plan for classified employees, infringes upon that constitutional authority.

The primary objective in interpreting a constitutional provision "is to determine the text's original meaning to the ratifiers, the people, at the time of ratification." *Wayne County v Hathcock*, 471 Mich 445, 468; 684 NW2d 765 (2004). This "rule of 'common understanding'" was described by the Supreme Court in *Hathcock*:

"A constitution is made for the people and by the people. The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it. 'For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed.'" [*Hathcock*, 471 Mich at 468, quoting *Traverse City School Dist v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971) (emphasis in original omitted), quoting *Cooley's Constitutional Limitations* 81.]

The courts apply "each term's plain meaning at the time of ratification." *Hathcock*, 471 Mich at 468-469.

A second important rule of constitutional construction requires consideration of the circumstances surrounding the provision's adoption and the purpose sought to be accomplished. *House Speaker v Governor*, 443 Mich 560, 580; 506 NW2d 190 (1993). The historical origins of the provision are relevant. *Federated Publications, Inc v Michigan State Univ Bd of Trustees*, 460 Mich 75, 85; 594 NW2d 491 (1999).

The State's civil service system and the Commission were created in response to what was referred to as the "longstanding 'spoils system', or 'patronage system'" that prevailed in state personnel practices of early twentieth century Michigan. *Council No 11, AFSCME v Civil Service Comm*, 408 Mich 385, 397; 292 NW2d 442 (1980) (citation omitted). This system was described as the practice of filling government jobs with "loyal party workers who [could] be counted on not to do the state job better than it [could] be done by others, but rather to do the party work or the candidate work when elections roll around." *Council No 11*, 408 Mich at 397, n 10 (citation omitted). An early report on the subject detailed the "political appointments,

promotions, demotions, rewards and punishments" that were a part of the traditional spoils system, and viewed "[a]ssessment schemes and participation in political activity during working hours . . . as serious and expensive causes of poor job performance by unqualified civil servants." *Id.*, at 397-398.

It was in this historical context that the Legislature enacted its first version of the civil service system in 1937 PA 346. *Id.*, at 398. But legislation in 1939 essentially destroyed the new system, ultimately leading the people to adopt a constitutional amendment establishing the State's civil service system and the Commission in 1940. *Id.*, at 398-401. Only minor changes were made to the provision upon adoption of the 1963 Constitution, now found in Const 1963, art 11, § 5.¹

In answering whether section 57 infringes the Commission's constitutional authority, *Council No 11*, *supra*, is also instructive. There, the Michigan Supreme Court addressed the validity of a Civil Service Commission rule prohibiting off-duty political activities by classified employees. The plaintiff union argued that the rule conflicted with the Political Freedom Act, MCL 15.401 *et seq*, which authorized public employees to participate in various political activities, MCL 15.402, with the prohibition that such activities could not be "actively engaged in by a public employee during those hours when that person is being compensated for the performance of that person's duties as a public employee." MCL 15.404. The Commission argued that "its authority to order a flat ban on the off-duty as well as on-duty partisan political activity by all state classified civil service employees . . . [was] derived from 'the plain language' of Const 1963, art 11, § 5." *Council No 11*, 408 Mich at 393.

The Supreme Court observed that the Legislature is the branch of government with the "power" and "duty" to "protect and insure" the political freedoms of all citizens, and that the enactment of laws to assure such freedom is "therefore a particularly proper legislative concern." *Id.*, at 394-395. The Court continued,

¹ Art 11, § 5 was again amended by the people in 1978 to permit collective bargaining by state troopers.

noting that the Legislature was given specific power by the people to regulate elections in Const 1963, art 2, and that "[i]t is well settled that the Legislature of this state is empowered to enact laws to promote and regulate political campaigns and candidacies." *Id.*, at 395. Despite these principles, the Commission in *Council No 11* argued that it had "exclusive jurisdiction" under art 11, § 5, to "'legislate' on the subject of political activity by classified civil servants." *Id.*, at 395-396.

After reviewing the history of the civil service system and the Commission's rules relating to political activity, the Court concluded that the Commission did not have authority to regulate off-duty political activity by state classified employees. *Id.*, at 397-403. With respect to the language of art 11, § 5, the Court concluded:

The power to make "rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service" is indeed a plenary grant of power. But it is to be exercised with respect to determining the conditions "*of* employment", not conditions *for* employment. As the learned trial court so aptly put it:

"It is the purpose of the commission to keep politics out of the classified state service, not to keep classified employees out of politics." [*Id.*, at 406; emphasis in original.]

The Court did not question the Commission's ability to regulate employment-related activity "involving internal matters such as job specifications, compensation, grievance procedures, discipline, collective bargaining and job performance," or its authority to prohibit off-duty activity that interferes with job performance. *Id.* The Court was careful to note that its opinion was not "qualifying" the Court's previous holding that the Commission has plenary powers within its "sphere of authority":

We intend, rather, to be understood as emphasizing that the commission's "sphere of authority" delimits its rule-making power and confines its jurisdiction over the political activity of classified personnel to on-the-job behavior related to job performance. . . . The statute does not conflict with the Civil Service Commission's authority to regulate, indeed proscribe, on-duty political activity or deal with unsatisfactory job performance attributable to off-duty political activity or any other cause on a case-by-case basis. [*Id.*, at 408-409.]

The Court held that the Commission's blanket rule prohibiting off-duty political activity was invalid.

By enacting section 57, the Legislature restricted on-duty political activity. Statutes are presumed constitutional. *Phillips v Mirac, Inc*, 470 Mich 415, 422; 685 NW2d 174 (2004). Moreover, the Legislature has broad powers to protect the public interest, including its power and duty to protect the integrity of the political process under

Const 1963, art 2.¹ *Council No 11*, 408 Mich at 394-395. Ensuring that public resources are not used to advocate for or against candidates or ballot questions assists in maintaining government neutrality with respect to elections, and promotes the integrity of the political process itself. Section 57 is consistent with Const 1963, art 11, § 5 and the purpose behind the creation of the civil service system and the Commission itself to "keep politics out of the classified state service." *Council No 11*, 408 Mich at 406. A payroll deduction plan that uses state resources to effectuate the political contributions of state employees would reinsert a political element into the classified service.

Consistent with this purpose of art 11, § 5, the Commission, through the adoption of rules, has also exercised its constitutional authority to restrict on-duty political activity. Rule 1-12.6 prohibits on-duty political activity. Rule 1-12.5 provides that "[t]he levying, solicitation, collection, or payment of any type of political assessment and the authorizing or ordering of such activity in the classified service are prohibited." Rule 6-10.3 further requires the Commission to reject or modify any provision of a collective bargaining agreement that is contrary to law or its rules. Finally, "[p]olitical activity . . . by classified employees during actual-duty time" is a prohibited subject of collective bargaining. Rule 6-3.2(b)(6).

¹ Specifically, Const 1963, art 2, § 4 provides that the Legislature "shall enact laws to regulate the . . . manner of all nominations and elections," and "shall enact laws to preserve the purity of elections." Additionally, exercising its powers under various provisions of the constitution, the Legislature has, for example, transferred duties and powers exercised by a person holding a position covered by the state civil service to a board, *Civil Service Comm v Dep't of Labor*, 424 Mich 571; 384 NW2d 728 (1986); vested the Civil Rights Commission with jurisdiction over sex discrimination claims by classified state employees, *Marsh v Dep't of Civil Service*, 142 Mich App 557; 370 NW2d 613 (1985), and *Dep't of Civil Rights ex rel Jones v Dep't of Civil Service*, 101 Mich App 295; 301 NW2d 12 (1980), and, provided supplemental employment benefits to mental health workers, *Oakley v Dep't of Mental Health*, 136 Mich App 58; 355 NW2d 650 (1984). In *Michigan State AFL-CIO v Civil Service Comm*, 455 Mich 720, 734, *supra*, n 8, the Court applied provisions of the Political Freedom Act, 1976 PA 169, MCL 15.401 *et seq*, to invalidate a Civil Service Commission rule that prohibited political activity by an employee on union leave. Citing the language of the statute and *Council No 11*, the Court ruled that the Legislature could, and did, preempt application of the rule insofar as while on union leave: (1) the employee was not being compensated by the employer, or (2) any compensation paid was not for the performance of the duties as a public employee. MCL 15.404 provides: "The activities permitted by sections 2 and 3 [certain political activities] shall not be actively engaged in by a public employee during those hours when that person is being compensated for the performance of that person's duties as a public employee."

It is my opinion, therefore, that section 57 of the Michigan Campaign Finance Act, MCL 169.257: (a) is a valid exercise of legislative authority to regulate the use of public resources and to "preserve the purity of elections" under Const 1963, art 2, § 4; (b) does not infringe upon the plenary authority granted the Civil Service Commission under Const 1963, art 11, § 5; and (c) precludes the Civil Service Commission from approving provisions of a collective bargaining agreement that would require the State to administer a payroll deduction plan facilitating state employee contributions to a political action committee.

In light of the above conclusions with respect to the applicability of section 57 of the MCFA and its application to classified state employees, it is unnecessary to address your remaining questions.

MIKE COX
Attorney General

OPINIONS OF THE ATTORNEY GENERAL

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

COUNTIES: Authority of counties to regulate outdoor
advertising signs

BILLBOARDS:

COUNTY ZONING ACT:

HIGHWAY ADVERTISING ACT:

The Highway Advertising Act preempts counties from regulating the size, lighting, and spacing of signs and sign structures that are located within an "adjacent area" as defined by MCL 252.302(o). Within the limitations of the County Zoning Act, a county may otherwise regulate signs and sign structures.

Opinion No. 7188

February 17, 2006

Honorable Tim Moore
State Representative
The Capitol
Lansing, MI 48913

You have asked if counties may regulate and control the size, lighting, and spacing of signs and sign structures with a county zoning ordinance adopted under the County Zoning Act or whether the Highway Advertising Act preempts county regulation in this area.

A county has only those powers that have been granted to it by the Constitution or the state Legislature. *Alan v Wayne County*, 388 Mich 210, 245; 200 NW2d 628 (1972).¹ A county's statutorily granted authority should be liberally construed in its favor and includes those powers "fairly implied and not

¹ See OAG, 2001-2002, No 7117, pp 115, 116 (September 11, 2002), for examples of powers that counties lack because of the absence of affirmative authority.

prohibited by the constitution." Const 1963, art 7, § 34. *Saginaw County v John Sexton Corp*, 232 Mich App 202, 221; 591 NW2d 52 (1998).

Section 1(1) of the County Zoning Act, MCL 125.201(1), provides limited authorization to a county board of commissioners to adopt zoning ordinances, including regulations "designating or limiting the location, size of, and the specific uses for which a . . . structure may be erected or altered":

The county board of commissioners of a county in this state may provide by zoning ordinance for the establishment of land development regulations and districts in the portions of the county outside the limits of cities and villages which regulate the use of land . . . to insure that uses of the land shall be situated in appropriate locations and relationships; . . . and to promote public health, safety, and welfare. For those purposes the county board of commissioners may divide the county into districts of a number, shape, and area as is considered best suited to carry out this act. . . . *Land development regulations may also be adopted designating or limiting the location, size of, and the specific uses for which a dwelling, building, or structure may be erected or altered* [Emphasis added.]

County ordinances may be adopted for portions of the county outside the limits of cities and villages as stated in this provision. Further, section 39 of the County Zoning Act, MCL 125.239, excludes certain townships from coverage under such a county ordinance:

A township in which an ordinance enacted under the township zoning act, Act No. 184 of the Public Acts of 1943, being sections 125.271 to 125.310 of the Michigan Compiled Laws, is in effect is not subject, unless otherwise provided in this act, to an ordinance, rule, or regulation adopted under this act.

Thus, county zoning ordinances are generally inapplicable to townships in which a validly enacted township zoning ordinance is in effect under the Township Zoning Act. *Bengston v Delta County*, 266 Mich App 612, 617; 703 NW2d 122 (2005).

In *Dingeman Advertising, Inc v Saginaw Twp*, 92 Mich App 735, 738; 285 NW2d 440 (1979), the Court considered language in the Township Zoning Act comparable to the emphasized language in section 1(1) of the County Zoning Act, MCL 125.201, and stated:

In order to implement programs to attain the goals set forth, local governmental bodies are given the power to regulate or prohibit in a specified manner the type and method of development. MCL 125.271; MSA 5.2963(1). *The power includes control over all "dwellings, buildings and structures" which would incorporate large scale signs.* MCL 125.271; MSA 5.2963(1), *Midland Twp v Rapanos*, 41 Mich App 75; 199 NW2d 548 (1972). [Emphasis added.]

Thus, regulations adopted by a county board of commissioners "designating or limiting the location, size of, and the specific uses for which a . . . structure may be erected or altered" may extend to signs, subject to the limitations expressed in MCL 125.201(1) and MCL 125.239 and so long as that power is not otherwise limited.

Your question concerns whether the Highway Advertising Act limits a county board of commissioners' power by preempting its authority to regulate signs.

According to its title, the Highway Advertising Act of 1972 (Act), MCL 252.301 *et seq*, provides for the licensing, regulation, control, and prohibition of outdoor advertising adjacent to certain roads and highways. A person shall not engage or continue to engage in outdoor advertising through the erection, use, or maintenance of any signs in an "adjacent area" where the facing of the sign is visible from an interstate highway, freeway, or primary highway. MCL 252.305. The term "adjacent area" is defined in section 2(o) of the Act to mean:

[T]he area measured from the nearest edge of the right of way of an interstate highway, freeway, or primary highway and extending 3,000 feet perpendicularly and then along a line parallel to the right-of-way line. [MCL 252.302(o).]

Section 4 of the Act, MCL 252.304, preempts local regulation of the size, lighting, and spacing of signs and their structures, in adjacent areas, except that a city, village, township, or charter township may adopt identical or more restrictive regulations:

This act regulates and controls the size, lighting, and spacing of signs and sign structures in adjacent areas and occupies the whole field of that regulation and control except for the following:

(a) *A city, village, township, or charter township may enact ordinances to regulate and control the size, lighting, and spacing of signs and sign structures, but the ordinances shall not permit a sign or sign structure that is otherwise prohibited by this act or require or cause the removal of lawfully erected signs or sign structures subject to this act without the payment of just compensation. A sign owner shall apply for an annual permit pursuant to section 6 for each sign to be maintained or to be erected within that city, village, charter township, or township. A sign erected or maintained within that city, village, township, or charter township shall also comply with all applicable provisions of this act. [MCL 252.304(a); emphasis added.]*

The Act does not extend that exception to counties. Section 25 of the Act recognizes that fact, providing that a study should be conducted to determine whether counties should be given the authority to regulate outdoor advertising in adjacent areas:

It is the intent of the legislature that the state fund a study to analyze the effect of the amendatory act that added this section and to make recommendations to the legislature of any additional changes to this act that should be considered. At a minimum, the study shall consider all of the following:

(a) *Whether regulatory authority under this act should be extended to counties.* [MCL 252.325(a); emphasis added.]

As to the scope of the Act's preemption provisions, *Dingeman Advertising, Inc, supra*, addressed whether section 4 of the Act preempted authority that a township could otherwise exercise under the Township Zoning Act to regulate signs. The Court noted that the Township Zoning Act is general in its scope while the Highway Advertising Act specifically addresses the regulation of signs in adjacent areas, stating that, "[w]hile both statutes are directed toward orderly development of land use, the HAA is specifically concerned with billboard advertising as it relates to land use." 92 Mich App at 739.

After recognizing the rule of statutory construction that specific statutory provisions control over more general statutory provisions, the Court found that the Highway Advertising Act expressly preempts local regulation:

When the state undertakes to assume exclusive regulation, municipal regulation is preempted. The express language utilized here indicates that *the pervasive scheme of control in this area* intended by the Legislature *preempts local regulation*. [92 Mich App at 741; emphasis added.]

The same conclusion may be drawn when considering the general regulatory authority conferred on a county board of commissioners under the County Zoning Act, compared to the specific limitations imposed by section 4 of the Highway Advertising Act.

It should be noted, however, that so long as the signs in question are not within an "adjacent area," the plain language of the Act does not preempt the authority of a county – or any other local unit of government – to regulate them. Similarly, so long as the county regulation does not address the "size, lighting, and spacing of signs and sign structures," regulation by a county is not preempted. *Homer Twp v Billboards by Johnson, Inc*, ___ Mich App ___, ___ NW2d ___, 2005 Mich App LEXIS 2674 (October 27, 2005).¹ As to such signs and sign structures, a county may exercise its limited regulatory authority under the County Zoning Act.

It is my opinion, therefore, that the Highway Advertising Act preempts counties from regulating the size, lighting, and spacing of signs and sign structures that are located within an "adjacent area" as defined

¹ In so ruling, the Court in *Homer Twp* followed *Central Advertising Co v St. Joseph Twp*, 125 Mich App 548, 552; 337 NW2d 15 (1983): "[P]re-emption extends only to the area of regulation, which is, size, lighting and spacing in adjacent areas. . . . [T]he Highway Advertising Act does not pre-empt local governments from regulating areas unrelated to the spacing, lighting and size of signs in adjacent areas." Accord, *Oshtemo Charter Twp v Central Advertising Co*, 125 Mich App 538, 542; 336 NW2d 823 (1983).

by MCL 252.302(*o*). Within the limitations of the County Zoning Act, a county may otherwise regulate signs and sign structures.

MIKE COX
Attorney General

**ENROLLED SENATE AND HOUSE BILLS
SIGNED INTO LAW OR VETOED
(2005 SESSION)**

Mich. Const. Art. IV, §33 provides: “Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law . . . If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves . . . he shall return it within such 14-day period with his objections, to the house in which it originated.”

Mich. Const. Art. IV, §27, further provides: “No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house.”

MCL 24.208 states in part:

“Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.

(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.”

**ENROLLED SENATE AND HOUSE BILLS
SIGNED INTO LAW OR VETOED
(2005 SESSION)**

Public Act No.	Enrolled House Bill	Enrolled Senate Bill	I.E.* Yes / No	Governor Approved Date	Filed Date	Effective Date	Subject
1	4718		Yes	2/2	2/3	2/3/2006 #	Highways; name; portion of M-54 in Genesee county; rename the "Marine Corps League Memorial Highway", and a portion of M-54 in part of Genesee county rename "UAW Sitdown Strike Memorial Highway". (Rep. J. Gleason)
2		624	Yes	2/2	2/3	2/3/2006 #	Highways; name; renaming a portion of US-24; designate as the "10th Mountain Division", and a portion of M-3 as the "Ronald W. Reagan Memorial Highway". (Sen. L. Toy)
3	5039		Yes	2/2	2/3	2/3/06	Counties; other; medical examiner; revise appointment procedures. (Rep. T. Casperson)
4		956	Yes	2/3	2/3	2/3/06 +	Appropriations; zero budget; supplemental appropriations; provide for fiscal year 2005-2006. (Sen. T. Stamas)
5	4244		Yes	2/3	2/3	2/3/06	Taxation; administration; right to an informal conference; clarify. (Rep. S. Hummel)
6	5356		Yes	2/3	2/3	10/1/06	Taxation; administration; requirement for auditors to identify refund opportunities; provide for. (Rep. L. Wenke)
7	5357		Yes	2/3	2/3	10/1/06	Taxation; administration; right to claim credit amounts as an offset against debt amounts in an audit; provide for. (Rep. T. Meyer)

* - I.E. means Legislature voted to give the Act immediate effect.

** - Act takes effect on the 91st day after *sine die* adjournment of the Legislature.

*** - See Act for applicable effective date.

+ - Line item veto

- Tie bar

Public Act No.	Enrolled House Bill	Enrolled Senate Bill	I.E.* Yes / No	Governor Approved Date	Filed Date	Effective Date	Subject
8	5358		Yes	2/3	2/3	10/1/06	Taxation; administration; procedure to challenge audit determinations that result in a refund; provide for. (Rep. L. Wenke)
9	5359		Yes	2/3	2/3	10/1/06	Taxation; administration; procedure to allow a taxpayer who is in informal conference to convert an assessment challenge to a claim for refund; provide for. (Rep. J. Emmons)
10	5360		Yes	2/3	2/3	10/1/06	Taxation; administration; informal conference; provide procedures for informal conference to be considered denied. (Rep. R. Jones)
11	5361		Yes	2/3	2/3	10/1/06	Taxation; administration; filing period for informal conference; extend. (Rep. J. Marleau)
12	5362		Yes	2/3	2/3	2/3/06	Taxation; administration; taxpayer right to rely on bulletins and private letter rulings from department of treasury; provide for. (Rep. L. Drolet)
13	5364		Yes	2/3	2/3	2/3/06	Property tax; appeals; clerical error and mutual mistake of fact; revise application and definition. (Rep. K. Green)

* - I.E. means Legislature voted to give the Act immediate effect.

** - Act takes effect on the 91st day after *sine die* adjournment of the Legislature.

*** - See Act for applicable effective date.

+ - Line item veto

- Tie bar

Public Act No.	Enrolled House Bill	Enrolled Senate Bill	I.E.* Yes / No	Governor Approved Date	Filed Date	Effective Date	Subject
Veto	5355					2/3/06	Taxation; administration; issuance of retroactive application; modify. (Rep. F. Sheen)
Veto	5363					2/3/06	Taxation; administration; authority of state treasurer to settle tax disputes; provide for certain procedures. (Rep. J. Stakoe)
Veto	5386					2/3/06	Use tax; exemptions; certain exemptions; eliminate. (Rep. R. Kahn)
Veto	5447					2/3/06	Labor; health and safety; promulgation of rules regarding workplace ergonomics; prohibit. (Rep. R. Jones)
Veto		957				2/3/06	Single business tax; credit; alternative tax rate and percentage reduction in tax liability; revise. (Sen. N. Cassis)

* - I.E. means Legislature voted to give the Act immediate effect.

** - Act takes effect on the 91st day after *sine die* adjournment of the Legislature.

*** - See Act for applicable effective date.

+ - Line item veto

- Tie bar

MICHIGAN ADMINISTRATIVE CODE TABLE
(2005 SESSION)

MCL 24.208 states in part:

“Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

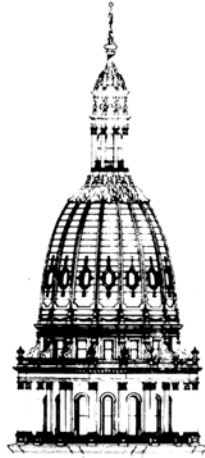
(i) Other official information considered necessary or appropriate by the State Office of Administrative Hearings and Rules.”

The following table cites administrative rules promulgated during the year 2000, and indicates the effect of these rules on the Michigan Administrative Code (1979 ed.).

**MICHIGAN ADMINISTRATIVE CODE TABLE
(2005 RULE FILINGS)**

R Number	Action	2006 MR Issue	R Number	Action	2006 MR Issue	R Number	Action	2006 MR Issue
15.1	*	3	285.813.5	*	2	338.2205	N	3
15.1a	*	3	323.1041	*	1	338.2206	N	3
15.2	*	3	323.1043	*	1	338.2207	N	3
15.3	*	3	323.1044	*	1	339.6045	*	4
15.4	*	3	323.1050	*	1	339.6051	A	4
15.5	*	3	323.1053	*	1	408.31107	A	2
15.6	*	3	323.1055	*	1	408.31169	A	2
15.7	*	3	323.1057	*	1	425.101	N	3
15.8	*	3	323.1060	*	1	425.102	N	3
15.9	*	3	323.1062	*	1	425.103	N	3
15.10	*	3	323.1064	*	1	425.201	N	3
18.451	R	2	323.1065	*	1	425.202	N	3
18.452	R	2	323.1069	*	1	425.203	N	3
18.452a	R	2	323.1082	*	1	425.204	N	3
18.453	R	2	323.1090	*	1	425.205	N	3
18.454	R	2	323.1092	*	1	425.206	N	3
18.455	R	2	323.1096	*	1	425.207	N	3
18.455a	R	2	323.1097	*	1	425.301	N	3
18.456	R	2	323.1100	*	1	425.302	N	3
18.457	R	2	323.1105	*	1	425.303	N	3
18.458	R	2	323.1116	*	1	425.304	N	3
18.459	R	2	323.1117	*	1	425.305	N	3
18.460	R	2	323.1203	*	1	425.306	N	3
18.461	R	2	323.1205	*	1	425.307	N	3
18.462	R	2	323.1209	*	1	425.308	N	3
18.14901	A	2	323.1211	*	1	425.309	N	3
18.14902	A	2	323.1213	*	1	425.401	N	3
18.14903	A	2	323.1217	*	1	425.402	N	3
18.14904	A	2	323.1219	*	1	425.403	N	3
18.14905	A	2	323.1221	*	1	425.404	N	3
18.14906	A	2	325.9084	*	4	425.405	N	3
18.14907	A	2	325.9086	*	4	425.406	N	3
18.14908	A	2	336.1627	*	4	425.407	N	3
18.14909	A	2	336.2004	*	4	425.408	N	3
18.14910	A	2	336.2005	*	4	425.409	N	3
285.813.1	*	2	338.2201	N	3	425.501	N	3
285.813.2	*	2	338.2202	N	3	425.502	N	3
285.813.3	*	2	338.2203	N	3	425.503	N	3
285.813.4	*	2	338.2204	N	3	425.601	N	3
						425.602	N	3

(* Amendment to Rule, A Added Rule, N New Rule, R Rescinded Rule)



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